93-720

No. _____

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1993

NATALIE HAAS STEFFEN, IN HER OFFICIAL CAPACITY AS COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES,

*Petitioner,*

v.

CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, AND CASSANDRA RIVERS,

*Respondents.*

**Petition For Writ Of Certiorari To The Supreme Court Of Minnesota**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Can a state, consistent with this Court's prior decisions on the right to travel, attempt to make the availability of welfare benefits a neutral factor in the decision of adults without minor children to move to the state by limiting public assistance benefits for the first six months to the higher of: (a) the amount of assistance received by the person in the previous state of residence, or (b) sixty percent of the benefits received by longer term residents?

2. If the answer to question 1 is in the negative, should the Court reconsider its prior right to travel decisions in order to establish an "undue burden" test consistent with the Court's approach to examining alleged violations of other fundamental rights?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iv

OPINION BELOW ..... 2

JURISDICTION ..... 2

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS ..... 2

STATEMENT OF THE CASE ..... 3

REASONS FOR GRANTING THE PETITION ..... 8

I. BECAUSE MINNESOTA'S STATUTE MAKES WELFARE BENEFITS A NEUTRAL FACTOR IN THE DECISION OF INDIGENT ADULTS CONSIDERING A MOVE TO MINNESOTA, MINNESOTA'S STATUTE IS SIGNIFICANTLY DIFFERENT THAN OTHER DURATIONAL RESIDENCY REQUIREMENTS STRUCK DOWN BY THIS COURT ON RIGHT TO TRAVEL AND EQUAL PROTECTION GROUNDS ..... 9

A. The Minnesota Statute Does not Penalize The Right To Travel ..... 13

B. The Minnesota Statute Does Not Violate Respondents' Right to Equal Protection .... 16

II. IF THE APPLICATION OF THE PRINCIPLES OF *SHAPIRO* AND ITS PROGENY COMPEL INVALIDATION OF THE MINNESOTA STATUTE, THEN THOSE PRINCIPLES SHOULD BE RECONSIDERED IN LIGHT OF THE FISCAL CRISES FACED BY STATES AND THE NEED FOR NON-DRASTIC OPTIONS TO ADDRESS THEM ..... 20

TABLE OF CONTENTS – Continued

Page

CONCLUSION ..... 26

APPENDIX ..... A1

# TABLE OF AUTHORITIES

Page

UNITED STATES CONSTITUTION

Article IV, § 2 ..... 7

Fourteenth Amendment, Equal Protection Clause ...2, 7

MINNESOTA CONSTITUTION

Article I, § 2 ..... 7

FEDERAL STATUTES

28 U.S.C. § 1257 (1988) ..... 2

42 U.S.C. § 602(b) (1988) ..... 11

42 U.S.C. § 1315(a) (Supp. III 1992) ..... 11

42 U.S.C. § 1983 (1988) ..... 7

MINNESOTA STATUTES

Act of May 27, 1992, 1st Spec. Sess., ch. 1, art. 6, §§ 31-32, 1993 Minn. Laws 3282-84 ..... 5

Act of May 27, 1993, 1st Spec. Sess., ch. 6, § 15, 1993 Minn. Laws 3456 ..... 5

Minn. Stat. ch. 256D (1992) ..... 4

Minn. Stat. §§ 256D.01 – 256D.21 (1992) ..... 3

Minn. Stat. § 256D.05, subd. 1(a) (1992) ..... 5

Minn. Stat. § 256D.051 (1992) ..... 5

Minn. Stat. § 256D.06, subd. 1 (1992) ..... 3

TABLE OF AUTHORITIES – Continued

Page

Minn. Stat. § 256D.065 (1992) ..... *passim*

Minn. Stat. § 256D.101 (1992) ..... 5

STATUTES OF OTHER JURISDICTIONS

Cal. Welf. & Inst. Code § 11450.03 (West 1993) ..... 12

Ill. Ann. Stat. ch. 305, § 5/11-30 (Smith-Hurd 1993) .... 11

N.Y. Soc. Serv. § 158(f)(1992) ..... 12

Wis. Stat. § 49.015(1)(b)(1-4) (Supp. 1992) ..... 24

Wis. Stat. § 49.015(3) (Supp. 1992) ..... 24

Wis. Stat. § 49.19(11m) (Supp. 1992) ..... 11

FEDERAL DECISIONS

Atkins v. Parker, 472 U.S. 115 (1985) ..... 18

Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986) ..... 13, 14, 22

Califano v. Torres, 435 U.S. 1 (1978) ..... 18

Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993) (appeal pending) ..... 12, 21

Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) ..... 17

Marston v. Lewis, 410 U.S. 679 (1973) ..... 16

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

Payne v. Tennessee, 501 U.S. ___, 111 S. Ct. 2597 (1991) ..... 20

Planned Parenthood v. Casey, ___ U.S. ___, 112 S. Ct. 2791 (1992) ..... 20, 23, 24

Shapiro v. Thompson, 394 U.S. 618 (1969) ..... *passim*

Sosna v. Iowa, 419 U.S. 393 (1975) ..... 17

Starns v. Malkerson, 326 F. Supp. 234 (D. Minn. 1970), aff'd, 401 U.S. 985 (1971) ..... 17

Sturgis v. Washington, 368 F. Supp. 38 (W.D. Wash. 1973), aff'd, 414 U.S. 1057 (1973) ..... 16

United States v. Dixon, ___ U.S. ___, 113 S. Ct. 2849 (1993) ..... 20

Webster v. Reproductive Health Serv., 492 U.S. 490 (1989) ..... 20

Zobel v. Williams, 457 U.S. 55 (1981) ..... 13

MINNESOTA DECISIONS

Davis v. Davis, 297 Minn. 187, 210 N.W.2d 221 (1973) ..... 17

Mitchell v. Steffen, 487 N.W.2d 896 (Minn. Ct. App. 1992) ..... 7

Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993) ..... 2

DECISIONS OF OTHER JURISDICTIONS

Jones v. Milwaukee County, 485 N.W.2d 21 (Wis. 1992) ..... 17, 24, 25

Saxon v. Department of Social Services, 479 N.W.2d 361 (Mich. Ct. App. 1991) ..... 9

TABLE OF AUTHORITIES – Continued

Page

FEDERAL RULES AND REGULATIONS

Sup. Ct. R. 10.1 ..... 8

MINNESOTA RULES AND REGULATIONS

Minnesota Rules, parts 9500.1200 to 9500.1270..... 3

MISCELLANEOUS

Iris Lav, et al., Center on Budget and Policy Priorities and Center for the Study of the States, *The States and the Poor, Budget Decisions Hurt Low Income People in 1992* (1993)..... 10

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**Petition For Writ Of Certiorari To The Supreme Court Of Minnesota**

## PETITION FOR WRIT OF CERTIORARI

The Petitioner, Natalie Haas Steffen, Commissioner of the Minnesota Department of Human Services, respectfully requests this Court to issue a Writ of Certiorari to review the judgment of the Supreme Court of the State of Minnesota entered in this action on August 6, 1993.

## OPINION BELOW

The opinion of the Minnesota Supreme Court in *Mitchell v. Steffen*, 504 N.W.2d 198 (Minn. 1993), is reproduced in the appendix at A1.

## JURISDICTION

On August 6, 1993, the Minnesota Supreme Court issued its opinion holding that a Minnesota statute burdens the fundamental right to travel guaranteed by the United States Constitution and violates the Equal Protection Clause of the United States Constitution. This Court has jurisdiction to review, by writ of certiorari, final judgments rendered by the highest court of a state "where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution." 28 U.S.C. § 1257 (1988). Therefore this Court has jurisdiction over this matter.

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Fourteenth Amendment:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of

law, nor deny to any person within its jurisdiction the equal protection of the laws.

Minn. Stat. § 256D.065 (1992):

> Notwithstanding any other provisions of sections 256D.01 to 256D.21, otherwise eligible applicants without minor children, who have been residing in the state less than six months, shall be granted general assistance and work readiness payments in an amount that, when added to the nonexempt income actually available to the applicant, shall equal 60 percent of the amount that the applicant would be eligible to receive under section 256D.06, subdivision 1. A person may receive benefits in excess of this amount, equal to the lesser of the benefits actually received in the last state of residence or the maximum benefits allowable under section 256D.06, subdivision 1. To receive the higher benefit amount, the person must provide verification of the amount of assistance received in the last state of residence. Nonexempt income is the income considered available under Minnesota Rules, parts 9500.1200 to 9500.1270.

## STATEMENT OF THE CASE

In 1990, the State of Minnesota faced a severe fiscal crisis necessitating painful budget cuts. During that year, as the Minnesota Department of Human Services ("Department") prepared its biennial budget for consideration by the 1991 Legislature, the Department was informed that the state was facing a deficit of $1.2 billion. Affidavit of John Petraborg ("Petraborg Aff."), A70-71. The Department was required by then Governor Rudy

Perpich to propose $200 million in reductions from its current budget. A71. From August 1990 through January 1991, Department staff researched a wide variety of public assistance budget cut options for balancing the biennial budget for fiscal years 1992 and 1993. *Id.* These proposals examined possible cuts in all assistance programs, with the estimated savings for individual cuts ranging from $25,000 to $22 million per year. *Id.* Given the seriousness of the budget shortfall, no option was excluded from consideration as all state agencies developed proposals to cut the state budget to conform with revenues. *Id.* Among the many options which were considered were eliminating the work readiness program altogether; eliminating the emergency assistance component of the Aid to Families with Dependent Children ("AFDC") Program and emergency general assistance; and even repealing the general assistance, work readiness and emergency general assistance programs entirely. *Id.*

Instead of totally eliminating certain public assistance programs, the 1991 Minnesota Legislature enacted less drastic measures, which included Minn. Stat. § 256D.065 (1992) (sometimes hereinafter the "1991 law"). The law, effective on July 1, 1991, applies only to eligible adults without minor children who have resided in the state less than six months and who apply for general assistance or work readiness benefits. General assistance and work readiness are state-funded programs for low-income households in Minnesota not eligible for federally financed benefit programs such as AFDC, Social Security, or Supplemental Security Income. *See* Minn. Stat. ch. 256D (1992). To receive general assistance, a state resident

must, in addition to meeting income and asset limitations, meet the criteria for one of 14 categories. Minn. Stat. § 256D.05, subd. 1(a) (1992). State residents whose income and resources are less than the standard of need but who do not fit into one of the general assistance categories are eligible to participate in the work readiness program. *See* Minn. Stat. § 256D.051 (1992).[1] Work readiness recipients must participate in training programs provided by each county agency which are intended to facilitate obtaining and retaining employment. *Id.* Work readiness benefits are only available for six months in a 12-month period (or seven consecutive months in a 12-month period for persons who are determined to be functionally illiterate). *Id.*; Minn. Stat. § 256D.101 (1992).

Under the 1991 law, eligible adults without minor children who have resided in the state less than six months and who apply for general assistance or work readiness benefits receive an amount that, when added to nonexempt income, is no greater than 60 percent of the amount that longer term residents would be eligible to receive under state law. However, if the person received similar benefits in the last state of residence, the person may receive benefits equal to the lesser of: (1) the benefits actually received in the last state of residence, or (2) the maximum benefits allowable under state law for longer term residents. The maximum general assistance or work readiness benefits payable to eligible persons who have

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[1] Minn. Stat. § 256D.051 (1992) was amended by the Act of May 27, 1992, 1st Spec. Sess., ch. 1, art. 6, §§ 31-32, 1993 Minn. Laws 3282-84, and the Act of May 27, 1993, 1st Spec. Sess., ch. 6, § 15, 1993 Minn. Laws 3456.

resided in Minnesota longer than six consecutive months are $203 per month for a single person and $260 per month for a married couple. Stipulation of Facts, ¶ 1, A66. Under Minn. Stat. § 256D.065, eligible adults without minor children who have resided in the state less than six months and received no similar benefits in their last state of residence would receive general assistance or work readiness benefits (whichever applies) of a maximum of $122 per month for a single person or $156 per month for a married couple. Stipulation of Facts, ¶ 3, A67-68. If they received benefits in the last state of residence higher than those amounts, they will receive in Minnesota the amount paid by the last state, up to the level of Minnesota's maximum benefit.

The Department estimates that the potential savings to the State of Minnesota from the 1991 law are approximately $890,000 for state fiscal year 1992; $1 million for state fiscal year 1993; $1.2 million for state fiscal year 1994 and $1 million for state fiscal year 1995. Petraborg Aff., A71.

The Respondents are unmarried adult Minnesota residents who had resided in Minnesota less than six months prior to application for public assistance. Amended Complaint, ¶¶ 5-7, A74-75. Respondents brought this action on behalf of themselves and a class of Minnesota residents who applied for and were eligible to receive general assistance or work readiness benefits but who, because they lived in Minnesota less than six months prior to their application, received less than the amount they would otherwise be entitled to receive. *Id.*, ¶ 9, A76.

Respondents brought this action in state district court under 42 U.S.C. § 1983 (1988), alleging that the 1991 law violates Respondents' right to travel; violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, § 2 of the Minnesota Constitution; and violates the privileges and immunities secured to Respondents by Article IV, § 2 of the United States Constitution and Article I, § 2 of the Minnesota Constitution. Amended Complaint, ¶¶ 55-57, A87.

The district court certified this action as a class action. Order and Memorandum, A59. The court entered summary judgment on behalf of Respondents on their claim that Minn. Stat. § 256D.065 is unconstitutional under the United States Constitution. A59. The court restrained the Petitioner from enforcing or further implementing the provisions of Minn. Stat. § 256D.065 (1992). A59.

On appeal, the Minnesota Court of Appeals affirmed the conclusion of the district court that the statute violates the United States Constitution, holding that the statute violates Respondents' right to travel and right to equal protection of the laws. A43, A47; *Mitchell v. Steffen*, 487 N.W.2d 896 (Minn. Ct. App. 1992). The court also held that the statute violates the equal protection guarantees of the Minnesota Constitution. A49.

The Minnesota Supreme Court affirmed the decision of the Minnesota Court of Appeals on the federal constitutional issues and did not reach the state constitutional issue. A13. The court found no evidence that the 1991 law actually deters migration or seeks to impede travel, but it concluded that the statute "penalizes" the fundamental

constitutional right to migrate. A5, A12. Thus the court utilized strict scrutiny in its equal protection analysis. *Id.* Finding no compelling state interest for the law, the court struck it down under the Equal Protection Clause of the United States Constitution. A13.

## REASONS FOR GRANTING THE PETITION

A petition for certiorari is granted by this Court "when there are special and important reasons therefor." Sup. Ct. R. 10.1. Review may be granted when a state court has decided a federal question in a way that conflicts with decisions of this Court or other courts or when a state court has decided an "important question of federal law which has not been, but should be, settled by this Court." *Id.*

This case presents an important question of federal law which has not been, but should be, settled by this Court: whether a state law, which provides new residents with welfare assistance at least equal to the benefits received in the previous state of residence (up to the new state's full benefits) and with full benefits after six months' residency, violates the constitutional right to migrate and the right to equal protection under the principles announced in *Shapiro v. Thompson*, 394 U.S. 618 (1969), *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), and other decisions of this Court relating to durational residency requirements. If the answer to this question is "yes," then this case raises the additional issue of whether the principles of *Shapiro* and *Memorial Hospital* should be reconsidered in light of more recent decisions

of this Court applying an "undue burden" test to analogous rights and in light of the new budget crises that states have been facing and the need for budget-cutting measures other than those that would cut off assistance programs entirely. The discussion below addresses these two issues.

## I. BECAUSE MINNESOTA'S STATUTE MAKES WELFARE BENEFITS A NEUTRAL FACTOR IN THE DECISION OF INDIGENT ADULTS CONSIDERING A MOVE TO MINNESOTA, MINNESOTA'S STATUTE IS SIGNIFICANTLY DIFFERENT THAN OTHER DURATIONAL RESIDENCY REQUIREMENTS STRUCK DOWN BY THIS COURT ON RIGHT TO TRAVEL AND EQUAL PROTECTION GROUNDS.

The $1.2 billion budget crisis in Minnesota and the resulting need to cut the state's public assistance budget in 1991 put Minnesota's lawmakers in the unfortunate position of being forced to decide how to allocate scarce resources among its neediest residents. State legislators knew that the state's public assistance programs would be subject to demands not only by the state's current indigent residents but also by indigent people moving into Minnesota from other states. Minnesota had among its options the radical choice that some other states made, which was to eliminate general assistance altogether. *See, e.g., Saxon v. Department of Social Services*, 479 N.W.2d 361 (Mich. Ct. App. 1991). This choice was entirely nondiscriminatory with respect to newly arrived versus longer-term residents of such states, but it could hardly have been said to have benefitted poor people.

To avoid this drastic solution, Minnesota adopted other measures, which included a multi-level public assistance statute. That statute has a dual purpose: it lowers the state's current and future welfare costs, see A71, and, as explained below, it makes the level of public assistance benefits a *neutral* factor in the decision of indigent adults without minor children to move to Minnesota. It was also carefully crafted so that the exercise of the right to migrate into Minnesota would *not* be penalized; new Minnesota residents would immediately receive as much or more public assistance benefits as they had received in their prior states of residence.

Minnesota is not alone in facing a fiscal crisis and being forced to make difficult allocations of scarce welfare resources.

> In 1992, many states faced a third consecutive year of severe fiscal distress. Thirty-five states that had enacted balanced budgets for 1992 faced deficits in these budgets because revenues lagged behind projections, expenditures were higher than anticipated, or both. These states, many of which had reduced spending or raised taxes in their initial budgets, made substantial mid-year spending cuts to restore their budgets to balance. In addition, in preparing their budgets for fiscal year 1993, which in most states began in July 1992, the majority of states again faced significant gaps between needed spending and available revenues. Many instituted another round of large program reductions.

Iris Lav, et al., Center on Budget and Policy Priorities and Center for the Study of the States, *The States and the Poor, Budget Decisions Hurt Low Income People in 1992* (1993).

Other states have also adopted multi-level welfare benefit laws as a means of addressing welfare caseloads in the wake of tight state budgets. In 1992, Wisconsin passed a law establishing a demonstration program aimed at studying the effects of AFDC benefits on interstate migration. Wis. Stat. § 49.19(11m) (Supp. 1992). A96-98. The statute provides that for the first six months of residence in Wisconsin, benefits are based on what was granted in the previous state of residence. *Id.* Wisconsin was granted a waiver by the United States Department of Human Health and Services ("HHS") under 42 U.S.C. § 1315(a) (Supp. III 1992), which allowed this statute to go into effect.[2] A99-100. Illinois also limits the amount of welfare assistance paid to individuals moving to Illinois from another state. During the first 12 months of residency, recipients of public assistance receive aid in an amount no greater than the amount received under the law of the state from which he or she moved. Ill. Ann. Stat. ch. 305, § 5/11-30 (Smith-Hurd 1993). A101. New York legislation signed in April, 1992, limits "home relief payments" (corresponding to Minnesota's general assistance) to 80 percent of the benefits received by the person in his or her previous state of residence, or 80 percent of

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[2] At present, federal law prohibits states from restricting or denying AFDC benefits based upon the length of a family's residence within the state. 42 U.S.C. § 602(b) (1988). However, the Secretary of HHS is empowered to waive this, or any other federal AFDC requirement, for any "experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of the Act." 42 U.S.C. § 1315(a) (Supp. III 1992). Because Minnesota's general assistance and work readiness programs are state funded, the federal restriction does not apply to them.

what he or she would otherwise be eligible to receive in New York, whichever is higher, during the first six months of residence in New York. N.Y. Soc. Serv. § 158(f) (1992). A102. California recently enacted a one-year durational residency requirement for full AFDC benefits. Until the applicant for AFDC has resided in the state for twelve consecutive months, the applicant's level of benefits may not exceed what the family would have received in the state of prior residence. Cal. Welf. & Inst. Code § 11450.03 (West 1993). California's statute was preliminarily enjoined, the court having found it likely that the statute was unconstitutional under the principles of *Shapiro* and *Memorial Hospital*. *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993) (appeal pending).

This Court should take a careful look at Minnesota's multi-level public assistance statute and provide needed guidance to the lower courts so that they will not make the same mistake made by the Minnesota Supreme Court in this case and by the United States District Court for the Eastern District of California in *Green* by interpreting *Shapiro* and *Memorial Hospital* as a complete ban on durational residency requirements in the public assistance field. An absolute ban on durational residency requirements is neither mandated nor justified based on the principles underlying those cases, and the need for states to pursue solutions to allocating scarce welfare resources warrants this Court's examination of the case.

As the following discussion demonstrates, Minnesota's multi-level benefit program is significantly different from the statutes invalidated in *Shapiro* and *Memorial Hospital*. Because it makes welfare benefits a neutral factor in the decision of an adult indigent person to move to

Minnesota, it does not impose a penalty on travel. Because it meets the rational basis test, it does not violate the Equal Protection Clause of the United States Constitution.

### A. The Minnesota Statute Does Not Penalize The Right To Travel.

The freedom to travel, including the right of free interstate migration, is recognized by this Court as a fundamental right. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901-02 (1986). Where a residency requirement is challenged, right to travel analysis is "a particular application of equal protection analysis." *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1981). As the Minnesota Supreme Court properly recognized, the question in this case was not so much whether the right to travel has been "violated," but "whether the right to travel has been so burdened by the durational residency requirement of the 1991 amendment that the statute's classification requires strict scrutiny rather than minimal rational basis analysis." A5.

The seminal cases concerning residency requirements for public assistance statutes are *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). In *Shapiro*, the Court struck down statutory provisions which denied welfare assistance to residents of a state or the District of Columbia who had not yet resided in the jurisdiction for at least one year immediately preceding their applications for such assistance. The statutes' purpose was to protect the jurisdictions from an influx of persons seeking more generous

public assistance than might be available elsewhere, a purpose which the Court found constitutionally impermissible. *Id.* at 629. In *Memorial Hospital,* the Court struck down an Arizona statute requiring a year's residence in a county as a condition to receiving nonemergency hospitalization or medical care at the county's expense. The Arizona statute was also designed to discourage an influx of indigents into the county for the sole purpose of obtaining the benefits of the county's new and modern medical facilities. *Id.* at 263.

The principles which have emerged from *Shapiro* and *Memorial Hospital* are that the right to travel is implicated when a statute "*actually* deters such travel, . . . when *impeding* travel is its primary objective, . . . or when it uses any classification which serves to *penalize* the exercise of that right." *Soto-Lopez,* 476 U.S. at 903 (emphasis added; citations omitted). The Minnesota Supreme Court, applying these principles to the Minnesota statute, found that the statute did not deter migration or seek to impede travel but that it penalizes the right to migrate. A5, A12.

The Minnesota Supreme Court's decision was erroneous because the Minnesota statute clearly does not penalize travel. Unlike the statues in *Shapiro* and *Memorial Hospital,* the 1991 law was carefully crafted so that it would *not* burden the right of needy persons to travel. Any person subject to the statute will receive at least as much assistance as the person actually received in the last state of residence, up to the maximum available to longer term Minnesota residents. This statutory scheme makes welfare benefits a *neutral* factor in an individual's decision to move to the state. The impact of this aspect of the statute is simply to remove the *incentive* for people to

move to Minnesota just to receive higher welfare benefits. However, if the person received no assistance in the last state of residence, the exercise of that person's right to migrate to Minnesota will *not* be penalized, but rather *rewarded*, since the statute will provide needed assistance immediately upon becoming a resident of the state.

The differences between effects on migration resulting from the Minnesota statute and the statutes struck down in *Shapiro* and *Memorial Hospital* are best understood by consideration of a concrete example seen from the standpoint of an adult without minor children who is considering a move to Minnesota. If the person lived in a state with general assistance levels less than $122 per month, the 1991 law would not deter migration or penalize that person's move to Minnesota. To the extent that welfare benefit levels prior to the 1991 law may have been an incentive for such a person to move to Minnesota, the 1991 law would have reduced such an incentive. But, looked at from the perspective of that person, the 1991 law did not impose a system where the person will lose welfare benefits by moving to Minnesota, and is in effect "trapped" in the current state of residence by the public assistance programs. That person is not penalized with receiving no benefits or lesser benefits than they received in their last state of residence. Therefore, the statute cannot reasonably be said to deter migration of needy individuals into Minnesota or to penalize the exercise of the right to travel.

The Minnesota Supreme Court's conclusion that the 1991 law penalizes the Respondents' right to travel is erroneous in view of the undisputed facts. Respondent Mitchell's last state of residence was Florida, where he

received no public assistance other than food stamps for one month in May or June of 1991. Amended Complaint, ¶ 20, A79-80. Respondent Wilson was also a resident of Florida before coming to Minnesota. *Id.*, ¶ 27, A81. The amended complaint does not state that Wilson received any public assistance from the State of Florida. As new residents of Minnesota, Mitchell and Wilson each received $122 per month, which was more than either received in Florida. Thus their exercise of their rights to move to Minnesota was not penalized at all, but in fact gave them some income with which to meet their needs. Respondents Beamon's and Rivers' last states of residence were Illinois and Iowa, respectively, where they received public assistance of $165 and $162 per month, respectively. *Id.*, ¶¶ 6, 7, 37, 40, 51, A75, A83-84, A86. Upon moving to Minnesota, they received the same amount of public assistance as they received before moving to Minnesota. *Id.*, ¶¶ 6-7, A75. Thus their right to travel was not penalized by a loss of welfare benefits. There was no loss. None of the named Respondents' or class members' right to travel was violated by the 1991 law.

### B. The Minnesota Statute Does Not Violate Respondents' Right to Equal Protection.

If the Minnesota Supreme Court had not subjected the Minnesota statute to strict scrutiny, the statute would have passed constitutional muster. Durational residency requirements have been upheld under the rational basis test with respect to, e.g., voter registration (*Marston v. Lewis*, 410 U.S. 679 (1973)), in-state tuition (*Sturgis v.*

*Washington*, 368 F. Supp. 38 (W.D. Wash. 1973), *aff'd*, 414 U.S. 1057 (1973); *Starns v. Malkerson*, 326 F. Supp. 234 (D. Minn. 1970), *aff'd*, 401 U.S. 985 (1971)), divorce proceedings (*Sosna v. Iowa*, 419 U.S. 393 (1975); *Davis v. Davis*, 297 Minn. 187, 210 N.W.2d 221 (1973)), and general relief (*Jones v. Milwaukee County*, 485 N.W.2d 21 (Wis. 1992)).

As the Court stated in *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 (1985): "Generally, a law will survive that scrutiny if the distinction rationally furthers a legitimate state purpose." The state's legitimate interest in requiring six months of residence in the state before entitlement to full general assistance and work readiness payments is its interest in not providing an *incentive* for people to move into the state just to obtain higher welfare benefits. Recognizing that *deterring* immigration of indigents is a constitutionally impermissible purpose, *Shapiro*, 394 U.S. at 631, the Minnesota Legislature instead aimed for the goal of making welfare assistance a neutral factor for an indigent person who was considering a move to Minnesota. A person may move to Minnesota knowing that welfare assistance will be available, but knowing that during the first six months of residence the payments will not exceed those received in the last state of residence.[3] By making welfare assistance a neutral factor, the state may maximize the use of limited welfare resources in order to take care of needy persons within its borders.

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[3] However, the Legislature did provide a "floor" in benefit levels at 60 percent of the otherwise applicable standard, which might result in more benefits than the person received in his or her former state of residence.

A related rational basis for the 1991 law arises from the state's need to reduce state expenditures to meet the fiscal crisis that it faced.[4] The State of Minnesota was facing a deficit of $1.2 billion, and the Department was required to propose $200 million in reductions from its current budget. Petraborg Aff., A70-71. All budget-cutting alternatives were considered, including the options of eliminating the work readiness program altogether; eliminating the emergency assistance portion of AFDC and emergency general assistance; and even repealing the general assistance, work readiness and emergency general assistance programs entirely. *Id.*, A71. Had the state taken more draconian steps, such as eliminating general assistance altogether, such actions would have been within the Legislature's power and would not contravene the constitutional rights of general assistance recipients. *Atkins v. Parker,* 472 U.S. 115 (1985). The 1991 law reduces state expenditures without taking the drastic measures that other states took to reduce welfare assistance expenditures.

The 1991 law is rationally related to both of its purposes. Temporarily providing either 60 percent of full

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[4] Saving taxpayer dollars was considered a legitimate public purpose underpinning the exclusion of persons in Puerto Rico from the federal Supplemental Security Income program. *Califano v. Torres,* 435 U.S. 1, 5 n.7 (1978). In *Torres,* the Court stated that a law providing for governmental payments of monetary benefits "is entitled to a strong presumption of constitutionality." *Id.* at 5. The Court also noted: "So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket." *Id.* (citations omitted).

welfare benefits or welfare benefits that are no greater than those provided in the last state of residence clearly furthers the legislature's goal of not providing an incentive for people to move into the state just to obtain higher welfare benefits. For example, a person residing in Iowa, who will receive the same welfare benefit for the first six months of residence in Minnesota as he or she receives in Iowa, will find welfare assistance to be a neutral factor in the decision to move. Thus the law is not merely "rationally related" to the legislature's purpose to reduce the incentive to move to Minnesota just to receive higher welfare benefits; it is precisely tailored to that purpose. The 1991 law is also rationally related to the goal of reducing state expenditures because estimates show that the state will save approximately $1 million per year as a result of the implementation of the law. A71.

Because the principles underlying *Shapiro* and *Memorial Hospital* do not justify an absolute ban on durational residency requirements in the public assistance field, this Court should accept review of this case and prevent other courts from further misapplying *Shapiro* and *Memorial Hospital*. The Minnesota Supreme Court failed to recognize that the features of Minnesota's statute distinguish it from other durational residency requirements struck down by this Court as violative of the right to travel and the right to equal protection of the laws. This Court should grant the petition.

## II. IF THE APPLICATION OF THE PRINCIPLES OF *SHAPIRO* AND ITS PROGENY COMPEL INVALIDATION OF THE MINNESOTA STATUTE, THEN THOSE PRINCIPLES SHOULD BE RECONSIDERED IN LIGHT OF THE FISCAL CRISES FACED BY STATES AND THE NEED FOR NONDRASTIC OPTIONS TO ADDRESS THEM.

The Minnesota Supreme Court concluded that the principles of *Shapiro* and its progeny compelled invalidation of the Minnesota statute, stating: "Indeed, under the federal constitution as interpreted by the United States Supreme Court, we have no alternative." A10. For this reason, this Court should accept review of the Minnesota Supreme Court's decision so that, if necessary, the principles of *Shapiro* can be reconsidered and modified in light of the fiscal crises faced by states and the need for nondrastic options to address them.

This Court does not lightly reconsider a precedent, and *stare decisis* is the preferred course in constitutional adjudication. *United States v. Dixon*, ___ U.S. ___, 113 S. Ct. 2849, 2864 (1993). However, *stare decisis* is "not an 'inexorable command,' " *Planned Parenthood v. Casey*, ___ U.S. ___, 112 S. Ct. 2791, 2808 (1992), and "has less power in constitutional cases where, save for constitutional amendments, this Court is the only body able to make needed changes." *Webster v. Reproductive Health Serv.*, 492 U.S. 490, 518 (1989). As this Court said in *Dixon*:

> "[W]hen governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.' "

113 S. Ct. at 2864 (quoting *Payne v. Tennessee*, 501 U.S. ___, 111 S. Ct. 2597, 2600 (1991)). The principles of *Shapiro* and

its progeny have been, in the view of the Minnesota Supreme Court justices, faithfully applied by the Minnesota Supreme Court. The result is that the state is precluded from creating multi-level public assistance programs even where the legislature has carefully avoided a scheme that would deter or impede migration of indigent persons into Minnesota. In light of the budget crises that Minnesota and other states have been facing, the principles of *Shapiro* are thus unworkable and should be reconsidered.[5]

The aspect of *Shapiro* and *Memorial Hospital* that needs to be reexamined is the unsettled nature of the amount of impact on the right to travel which gives rise to a constitutional violation. Because the *amount* of penalty needed to invoke strict scrutiny has not been articulated, *see Memorial Hospital*, 415 U.S. at 257, the operative principle under *Shapiro* has been that a classification which imposes *any* penalty upon indigent persons who have exercised their constitutional right of interstate migration must be justified by a compelling state interest. *Soto-Lopez*, 476 U.S. at 906; *Memorial Hospital*, 415 U.S. at 258. In his dissent in *Memorial Hospital*, Justice (now Chief Justice) Rehnquist criticized the majority's failure to

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[5] Reconsideration of the principles of *Shapiro* would affect more than just Minnesota. As discussed *supra* at 11-12, Wisconsin, Illinois, New York, and California have adopted multi-level welfare benefit laws as a part of addressing rising welfare caseloads in the wake of tight state budgets. California's law has already been attacked, *see Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993) (appeal pending), and the other states' laws may be vulnerable to attack under *Shapiro* and *Memorial Hospital*.

define how much of a penalty on the right to travel triggered strict scrutiny, stating: "[T]he Court . . . leaves us entirely without guidance as to the proper standard to be applied." 415 U.S. at 285 (Rehnquist, J., dissenting). In her dissent in *Soto-Lopez*, in which Justices Rehnquist and Stevens joined, Justice O'Connor stated: "[S]omething more than a negligible or minimal impact on the right to travel is required before strict scrutiny is applied." 476 U.S. at 921 (O'Connor, J., dissenting). The concern expressed by the Chief Justice and Justices O'Connor and Stevens has been borne out in this case. The time has come to heed their advice and adopt a standard that requires something more than *any* penalty to trigger strict scrutiny.

Specifically, the principle that *any* penalty is enough to trigger strict scrutiny should be replaced by the principle that an "undue burden" upon the fundamental right to travel triggers strict scrutiny. An "undue burden" test would involve a balancing of the burdens on the right to travel against the governmental interests supporting a challenged state law. This type of balancing test was advocated by Justice Harlan in his dissent in *Shapiro*. Justice Harlan believed that the appropriate right to travel analysis involved three questions:

> (1) To what extent does a one-year residence condition upon welfare eligibility interfere with this right to travel? and (2) What are the governmental interests supporting such a condition? . . . The next question is the decisive one: whether the governmental interests served by residence requirements *outweigh* the burden imposed upon the right to travel?

394 U.S. at 671, 674 (Harlan, J., dissenting) (emphasis added). In his own analysis of the challenged welfare residency requirement, Justice Harlan posed the specific question: "whether a one-year welfare residence requirement amounts to an undue burden upon the right of interstate travel." *Id.* at 663 (Harlan, J., dissenting).

An "undue burden" test is consistent with a recent decision of this Court which examined the interplay between burdens upon fundamental rights and the Fourteenth Amendment of the United States Constitution. In *Planned Parenthood v. Casey*, ___ U.S. ___, 112 S. Ct. 2791 (1992), the fundamental right involved was the right of a woman to choose to have an abortion before viability. In Part IV of the opinion, Justices O'Connor, Kennedy, and Souter stated:

> As our jurisprudence relating to all liberties save perhaps abortion has recognized, not every law which makes a right more difficult to exercise is, *ipso facto*, an infringement of that right. An example clarifies the point. We have held that not every ballot access limitation amounts to an infringement of the right to vote. . . . Only where state regulation imposes an undue burden on a woman's ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause.

*Id.* at 2818-19. In explaining what is meant by the term "undue burden," the Court stated: "A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of woman seeking an abortion of a nonviable fetus." *Id.* at 2820.

An "undue burden" test as applied to the right to travel would develop, not reverse, the principles announced in *Shapiro* and its progeny, by making right to travel analysis consistent with the analysis applied to other liberties protected by the United States Constitution. The test would follow that announced in *Planned Parenthood:* an undue burden on the right to travel means a substantial obstacle in the path of indigent persons to migrate. Such a test would address the concerns previously expressed by the Chief Justice and Justices O'Connor and Stevens concerning the need for a standard as to how much of a penalty should trigger strict scrutiny.

A form of "undue burden" test has already been applied by one state court in a right to travel case. In *Jones v. Milwaukee County,* 485 N.W.2d 21 (Wis. 1992), the challenged statute required dependent persons to have resided in Wisconsin for at least 60 consecutive days to be eligible for general relief. The statute contained four exceptions making the 60-day waiting period inapplicable.[6] The Wisconsin court reviewed this Court's decisions in *Shapiro* and *Memorial Hospital* and concluded that this Court itself recognizes the unsettled nature of the amount

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[6] The 60-day waiting period is inapplicable where: (1) the person was born in Wisconsin; (2) the person has, in the past, resided in Wisconsin for at least 365 days; (3) the person came to Wisconsin to join a close relative who has resided in Wisconsin for at least 180 days before the arrival of the person; and (4) the person came to Wisconsin to accept a bona fide offer of employment and the person was eligible for employment. Wis. Stat. § 49.015(1)(b)(1-4) (Supp. 1992). The statute also provided an exception available in cases of medical emergency and cases of unusual misfortune or hardship. Wis. Stat. § 49.015(3) (Supp. 1992). *Jones,* 485 N.W.2d at 23.

of impact on the right to travel which gives rise to a constitutional violation and that the parameters of *Shapiro's* penalty analysis remains undefined. *Jones,* 485 N.W.2d at 26. The court applied a form of "undue burden" test. Considering the relatively short waiting period and the exceptions which make the waiting period inapplicable, the court concluded:

> [B]ecause the 60 day waiting period at issue here is so substantially less onerous than the one year waiting period of *Shapiro,* . . . it does not operate to penalize an individual's right to travel.

*Id.* The court went on to examine the state statute under a rational basis test, concluding:

> Wisconsin's objective of encouraging individuals to support themselves through employment is reasonable and . . . the 60 day waiting period is rationally related to that objective.

*Id.* at 28.

Under an "undue burden" test, the Minnesota statute would certainly survive constitutional scrutiny. It cannot be said that an indigent person who will receive immediate benefits upon becoming a resident in Minnesota, in an amount that is the same as or greater than the amount received in the previous state of residence, has had his or her rights unduly burdened as a result of exercising the fundamental right of migration.

Where multi-level welfare benefit plans do not create an undue burden upon the right of indigents to migrate, states ought to be able to implement them, especially now when states, due to severe fiscal pressures, are finding

themselves short of non-drastic options for cutting state welfare budgets. In this case, Minnesota Supreme Court Justice Coyne concurred in the result because she recognized that the justices are "bound by the [United States] Supreme Court opinion," but she evidenced doubt about the correctness of the decision from a policy standpoint, stating: "At a time when most states are struggling to remain solvent, I can see no earthly reason for limiting a state's option to the total discontinuance of general assistance or risking financial ruin." A31-32 (Coyne, J., concurring specially). Only by accepting review of this case can this Court allow the states the options they need.

## CONCLUSION

For the foregoing reasons, the petition should be granted.

Dated: November 4, 1993

Respectfully submitted,

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No. _____

In The

# Supreme Court of the United States

October Term, 1993

NATALIE HAAS STEFFEN, IN HER OFFICIAL CAPACITY AS COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES,

*Petitioner,*

v.

CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, AND CASSANDRA RIVERS,

*Respondents.*

**Petition For Writ Of Certiorari To The Supreme Court Of Minnesota**

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI

## TABLE OF CONTENTS OF APPENDIX TO PETITION FOR CERTIORARI

Page

Decision of Minnesota Supreme Court dated August 6, 1993 ..... A1

Decision of Minnesota Court of Appeals dated June 9, 1992 ..... A33

Amended Order of the District Court dated January 23, 1992 ..... A57

Order and Memorandum and Judgment of the District Court, entered January 24, 1992 ..... A58

Stipulation of Facts ..... A66

Affidavit of John Petraborg ..... A70

Amended Complaint ..... A73

Wis. Stat. § 49.19(11m) (Supp. 1992) ..... A96

Letter from U.S. Department of Health and Human Services to Wisconsin Department of Health and Social Services, July 27, 1992 ..... A99

Ill. Ann. Stat. ch. 305, § 5/11-30 (Smith-Hurd 1993) ..... A101

N.Y. Soc. Serv. § 158(f) (1992) ..... A102

STATE OF MINNESOTA IN SUPREME COURT

C3-92-239

Court of Appeals

Simonett, J.
Dissenting, Tomljanovich, J.
Concurring Specially, Coyne, J.
Took no part, Page, J.

Charles Mitchell, et al.,

Respondents,

vs.

Filed August 6, 1993
Office of Appellate Courts

Natalie Haas Steffen, in her official capacity as Commissioner, Minnesota Department of Human Services, petitioner,

Appellant.

SYLLABUS

1. Minn. Stat. § 256D.065 (1992), prescribing a durational residency requirement for full general assistance-work readiness benefits, burdens the fundamental right to travel and violates the equal protection clause of the United States Constitution.

Affirmed.

Heard, considered, and decided by the court en banc.

OPINION

Simonett, Justice.

This is an appeal from a summary judgment granted plaintiff-respondents in a class action suit. Both the trial court and the court of appeals ruled that Minn. Stat.

§ 256D.065 (1992), which imposes a durational residency requirement for full general assistance-work readiness benefits, was unconstitutional. *See Mitchell v. Steffen*, 487 N.W.2d 896 (Minn. App. 1992). We granted the petition for further review of the Commissioner of the Minnesota Department of Human Services, and we now affirm.

Faced with a budget crisis for the 1992-93 biennium, the legislature enacted Minn. Stat. § 256D.065, effective July 1, 1991 (hereinafter referred to as the "1991 amendment"), which reduces general assistance grants available to certain welfare recipients during their first 6 months of residency in this state. The amendment reads:

> Notwithstanding any other provisions of sections 256D.01 to 256D.21, otherwise eligible applicants without minor children, *who have been residing in the state less than six months*, shall be granted general assistance and work readiness payments in an amount that * * * equal[s] 60 percent of the amount that the applicant would be eligible to receive under section 256D.06, subdivision 1. A person may receive benefits in excess of this amount, equal to the lesser of the benefits actually received in the last state of residence or the maximum benefits allowable under section 256D.06, subdivision 1.

(Emphasis added.)

Plaintiff-respondents are unmarried adults without children who had resided in Minnesota less than 6 months and had applied for general assistance benefits after July 1, 1991. They received the reduced benefits and filed a complaint under 42 U.S.C. § 1983, alleging that Minn. Stat. § 256D.065 violates their right to travel, as

well as the equal protection clause of both the federal and state constitutions and the privileges and immunities clause of the federal constitution. The district court certified the action as a class action.

Welfare recipients who have resided in Minnesota for at least 6 months receive general assistance benefits of $203 a month for a single person and $260 per month for a married couple. Minn. Stat. §§ 256D.05, subd. 1a and 256D.06, subd. 1 (1990 & Supp. 1991).[1] Under the 1991 amendment, recipients who have resided in this state less than 6 months receive only 60 percent of these amounts.

In other words, eligible adults without minor children who have resided in Minnesota for less than 6 months receive $122 per month (instead of $203) if a single person and $156 per month (instead of $260) if a married couple; however, if the applicant provides verification, that person receives either the amount received in the previous state or the $203 or $260 per month granted Minnesota residents, whichever is lesser. Thus Minnesota will match the welfare benefits granted in the recipient's prior state but only up to the maximum Minnesota grant. Many states, however, provide no general

---

[1] The 1991 amendment applies also to work readiness benefits. These benefits are paid for 6 months in a 12-month period (with a minor exception) to a recipient who complies with the training requirements of the work readiness program. Maximum work readiness benefits are also $203 a month for a single person and $260 a month for a married couple, and are reduced to 60 percent for recipients who have resided in this state for less than 6 months. *See* Minn. Stat. § 256D.051 (1990 & Supp. 1991).

assistance-work readiness benefits to their indigent residents.

The trial court ruled that the 1991 amendment violated the respondents' fundamental right to travel and to equal protection of the laws under the United States Constitution, but did not reach the question of whether the Minnesota equal protection clause was violated. The trial court concluded that the primary purpose of the 1991 amendment was to deter indigents from coming to Minnesota, and that the law "burdens plaintiffs' right to travel because it uses a classification which penalizes the exercise of that right." The court enjoined further enforcement of the law but denied retroactive benefits.

The court of appeals agreed with the trial court that the 1991 amendment was unconstitutional. Because the right to travel was implicated by the 6-month residency requirement, the appeals court held the classification thereby created was subject to strict scrutiny; and because the law failed this heightened standard, it was unconstitutional. In addition, the court of appeals went on to hold that the law also violated our state's equal protection clause. Finally the court of appeals reversed the trial court's denial of retroactive benefits and remanded to the trial court to fashion a remedy for members of the class.

We granted the commissioner's petition for further review, which raises only the constitutional issues of equal protection and right to travel. (Issues relating to the privileges and immunities clause and to retroactive benefits are not raised here.)

The first two issues, as set out in the appellant commissioner's brief, are (1) whether the 1991 amendment

violates the constitutional right to travel, and (2) whether the amendment violates the federal equal protection clause. It seems to us the question is not so much whether the right to travel has been "violated," but whether the right to travel has been so burdened by the durational residency requirement of the 1991 amendment that the statute's classification requires strict scrutiny rather than minimal rational basis analysis. "In reality, right to travel analysis refers to little more than a particular application of equal protection analysis." *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1981).

The right to travel is inherent in the concept of our country as a federal union; hence the right to travel is a fundamental constitutional right under the federal constitution. *United States v. Guest*, 383 U.S. 745, 758-60 (1966). This right to travel, which includes the right to migrate, is delineated in a series of United States Supreme Court decisions, particularly *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); and *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898 (1986). The right to travel is implemented when a statute *actually deters* such travel, when *impeding* travel is its primary objective, or when it uses any *classification* which serves to *penalize* the exercise of that right. *Soto-Lopez*, 476 U.S. at 903.

In this case, there is no evidence that the 1991 amendment actually deters migration or seeks to impede travel. Indigent newcomers to Minnesota are no worse off (and maybe better off) for welfare benefits in this state than they were in the state of their prior residency, so that the level of benefits under the 1991 amendment is not a

deterrent to leaving the prior state. And while the purpose of the legislation was to conserve funds, it is clear from the statute itself that it was intended to save money without placing a deterrence on an indigent's decision to travel.

This lawsuit, then, is to be judged under the third type of situation, under those right-to-travel cases that have dealt "with state laws that, by classifying residents according to the time they established residence, resulted in the unequal distribution of rights and benefits among otherwise qualified bona fide residents." *Soto-Lopez*, 476 U.S. at 903.

*Shapiro v. Thompson*, 394 U.S. 618 (1969), is particularly pertinent. There a state statute denied welfare assistance to residents who had not resided in the state for at least 1 year. The statute created two classes of needy persons, one composed of residents residing in the state for over a year and the other of residents residing in the state for less than a year. "Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest." *Id.* at 638. The Court then held that the 1-year waiting period, which would cause indigents to hesitate to migrate to the state, failed to meet equal protection standards. While a state has a legitimate interest in preserving its fiscal integrity, the saving of welfare costs, said the Court, does not justify discriminating against newcomers.

A few years later, the United States Supreme Court decided *Memorial Hospital v. Maricopa County*, 415 U.S. 250

(1974). There an Arizona statute required a year's residence in a county as a condition for receiving nonemergency medical care at county expense. It was understood this statute covered interstate movement. The Court reasoned that medical care is as much a basic necessity of life to an indigent as welfare benefits; and, therefore, following *Shapiro,* the Court declared the statute unconstitutional. The Court held that the 1-year durational residency requirement for nonemergency free medical care created an "invidious classification" that impinged on the right to travel by denying newcomers the basic necessities of life and for which there was no compelling state interest. *Id.* at 269.

In several cases the United States Supreme Court has struck down state statutes with fixed point residency requirements. *See Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (1985) (state veterans preference limited to veterans who had been state residents on or prior to a certain date); *Attorney Gen. of N.Y. v. Soto-Lopez,* 476 U.S. 898 (1986) (veterans preference limited to veterans who had entered military service when a state resident or had been residents prior to a certain date). *Cf. Zobel v. Williams,* 457 U.S. 55 (1982) (Alaskan statute distributing oil revenue payments to all residents with the amount of the payments varying with years of residency, held invalid, failing to meet even the minimal rational basis test). In these three cases, interstate movement is less directly involved because the conferring of benefits is not dependent on a waiting period, but simply on the length of the residency.

Under the analysis applied in the United States Supreme Court's decisions, which we must follow, the

1991 amendment clearly implicates the right to travel. If a needy resident of Minnesota has resided here less than 6 months, he or she receives only 60 percent of the general assistance or work readiness benefits that other needy residents of Minnesota receive. These two classes are composed of equally needy welfare recipients, but members of the first class – solely because of a shorter residency – have their benefits reduced 40 percent.

Arguably the "right to travel" should focus on the interstate travel itself, not on what happens after the travel has ended. Within this context, it would seem that the decision to migrate is dependent upon a comparison of the benefits available in the state one proposes to leave with the benefits available in the state one proposes to go to. We understand the dissent in this case to take this position.

The United States Supreme Court, however, has extended the so-called "right to travel" to include what might better be called a "right to abide in any state," *i.e.*, a right to live and settle down anywhere one chooses in this country without being disadvantaged because of that choice. *See Dunn v. Blumstein*, 405 U.S. 330, 338 (1972). Inherent in making this choice is the exercise of the right to travel, or as it is sometimes and more precisely called, the right to migrate. Thus, it is said, a durational residency requirement involves an "indirect manner of burdening the right [to travel]." *Soto-Lopez*, 476 U.S. at 903.

In determining this "indirect" burdening of the right to travel, the United States Supreme Court has ruled that the comparison, in our case, is to be made between recent residents to Minnesota and other Minnesota residents,

not between recent Minnesota residents and residents of other states. The Court has made this abundantly clear. In *Shapiro v. Thompson*, 394 U.S. 618, 631 (1969), the Court said, "[A] State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally." Or as put in *Soto-Lopez*, the right to migrate "protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents." *Soto-Lopez*, 476 U.S. at 904. Or *Hooper*, 472 U.S. 612, 623: "The State may not favor established residents over new residents based on the view that the State may take care of 'its own,' if such is defined by prior residence."[2]

Plainly, then, the 1991 amendment implicates the constitutional right to travel. Even if so, contends the appellant commissioner, the "60 percent benefits for 6 months" does not penalize the right to travel so as to trigger strict scrutiny. "Penalize," as used in this context, does not mean, however, to sanction or punish, but rather to suffer disadvantage, loss or hardship. *See Cole v. Housing Authority of City of Newport*, 435 F.2d 807, 811 (1970) (quoted approvingly in *Memorial Hospital* at footnote 10).

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[2] Under the dissent's view, the 1991 amendment creates two classes, one class consisting of indigents residing in Minnesota, and the other class consisting of indigents living in other states. Here the distinction between the classes is the *place* of residence, not the *duration* of residence.

But if the place of residence is the relevant distinction, it seems the equal protection problem largely dissipates. There are ample differences between states to justify different welfare benefits in different states.

The nature of the disadvantage or hardship is important. *See Shapiro*, 394 U.S. at 638 n.21 (durational residence requirements for a license to hunt or fish or to practice a profession may not constitute a penalty on the exercise of the right to travel); *Davis v. Davis*, 297 Minn. 187, 192, 210 N.W.2d 221, 225 (1973) (durational residency requirement for bringing a divorce action valid, observing "not every penalty in interstate travel triggers the compelling-state-interest test").

At stake in this case are payments for the basic necessities of life, just as in *Shapiro* and *Memorial Hospital*. Half a year is a long time to wait for full general assistance benefits. "[E]ven temporary deprivations of very important benefits and rights can operate to penalize migration." *Soto-Lopez*, 476 U.S. at 907. A divided Wisconsin Supreme Court upheld a durational residency requirement for welfare benefits in certain instances, but the waiting period there was only 60 days. *Jones v. Milwaukee County*, 485 N.W.2d 21 (Wis. 1992). Here, instead of receiving $203 or $260 a month, the newly arrived indigents receive $81 a month less if single and $104 a month less if a couple, a not insignificant amount, especially if a Minnesota winter is at hand.[3]

Nor is it necessary to show that the 6-month waiting period has actually stopped people from coming to Minnesota. "*Shapiro* did not rest upon a finding that denial of welfare actually deterred travel." *Dunn v. Blumstein*, 405 U.S. 330, 339 (1972). It is not to be expected individuals in

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[3] The commissioner estimates that the 1991 amendment will save the state approximately $890,000 in fiscal year 1992, $1 million in 1993, $1.2 million in 1994, and $1 million in 1995.

other states, if deterred from migrating here, would come forward to say so. The test, rather, is whether it is reasonable to infer that needy individuals would be discouraged from migrating. *See Shapiro*, 394 U.S. at 629 ("An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance * * * ."); *Memorial Hospital*, 415 U.S. at 257 (An indigent "may hesitate if he knows that he must make the move without the possibility of falling back on the State for medical care.").

Finally, the fact that the 1991 amendment does provide at least reduced welfare benefits does not make the deprivation any less a "penalty" on travel. In *Memorial Hospital*, the fact that Arizona provided emergency medical care during the waiting period, while nonemergency medical care was denied, did not save the Arizona statute from being held unconstitutional.[4]

True, a state is not constitutionally required to provide welfare benefits in an adequate amount or in any amount. *Dandridge v. Williams*, 397 U.S. 471, 486-87 (1970). The equal protection clause is not an entitlement clause.

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[4] Recently, we might add, a federal district court held California's AFDC program, patterned similarly to this state's 1991 amendment, unconstitutional. *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993). The California plan imposed a 1-year residency requirement on newly arrived residents but provided reduced benefits not to exceed what the family would have received in the state of prior residence during the 1-year waiting period. Following *Shapiro* and *Memorial Hospital*, the court held the plan unconstitutional.

Indeed, many states do not have a general assistance program, and recently Michigan canceled its entire general assistance-work readiness program. But when a state decides to provide welfare benefits, the constitutional right to travel, as interpreted by the United States Supreme Court, mandates that the state distribute these benefits equally to its needy residents who are similarly situated without distinguishing between its residents on the duration of their residency.[5]

We conclude, therefore, that the "60 percent benefits for 6 months" plan "penalizes" the fundamental constitutional right to migrate. Indeed, under the federal constitution as interpreted by the United States Supreme Court, we have no alternative. Only one step in our analysis then remains, namely, determining whether the state can show a compelling state interest for its durational residency requirement. The appellant commissioner claims

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[5] The assumption that nonresident indigents move to a new state because of higher welfare benefits is apparently unproven and in some doubt. There are many other factors to account for migrating to Minnesota, such as job opportunities, the presence of family and friends, etc. Then, too, the net impact of in-migration and out-migration has been estimated at about zero. *See Welfare Migration Study: A Report to the 1991 Legislature,* Dept. of Human Services (Feb. 1991) at 24-25.

It should be noted, too, that the general assistance-work readiness programs deal with those persons residing in the state. The problem of transients, *i.e.*, those who pass through the state just long enough to pick up a welfare check, is a different problem, and is handled by weekly grants or vouchers for food and shelter by a county. *Id.* As *Shapiro* makes clear, the state may require residency for receipt of benefits without impinging on the constitutional right to travel, but it may not require a waiting period before receipt of benefits. 394 U.S. at 637.

the 1991 amendment serves a legitimate state interest, but, as the commissioner acknowledges, if there has been an impingement on the fundamental right to travel, the strict scrutiny standard governs, and the commissioner does not contend (nor could she) that the 1991 amendment meets a compelling state interest.

The purpose of the 1991 amendment was to conserve limited state funds, but *Shapiro* and *Memorial Hospital* flatly hold this is not a compelling reason. "The conservation of the taxpayers' purse," declares *Memorial Hospital*, 415 U.S. at 263, "is simply not a sufficient state interest to sustain a durational residence requirement which, in effect, severely penalizes exercise of the right to freely migrate and settle in another State."

The 1991 amendment is, therefore, unconstitutional under the equal protection clause of the United States Constitution. There is no need to consider whether the 1991 amendment violates our state equal protection clause, and we do not reach that issue.

Affirmed.

PAGE, Justice, took no part in the consideration or decision of this case.

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TOMLJANOVICH, Justice (dissenting).

Because I would answer all three questions presented in the negative, I respectfully dissent and would hold that Minn. Stat. § 256D.065 (1992) is constitutional.

The right to travel is implicated when a statute actually deters travel, when impeding travel is its primary purpose, or when it uses any classification which serves to penalize the exercise of the right to travel. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986).

Although the respondents failed to show they or any other people were actually deterred from migrating or traveling to Minnesota because of section 256D.065, the court of appeals assumed

> an indigent who desires to migrate to Minnesota may hesitate if he or she knows only 60 percent of the amount necessary to live in Minnesota will be available. This assumes, of course, that the $203 grant amount available to established Minnesota residents is the amount 'necessary to maintain a subsistence reasonably compatible with decency and health' in Minnesota.

*Mitchell v. Steffen*, 487 N.W.2d 896, 902 (citing the purpose of the general assistance statute at Minn. Stat. § 256D.01, subd. 1 (1990)). By this reasoning, if $203 is not sufficient to maintain this subsistence, the entire general assistance statute deters travel and would therefore be unconstitutional. It is a dubious assumption that $203 per month is sufficient to provide food, clothing, shelter and transportation in Minnesota. While I am very concerned about unfortunate people who must rely on this meager amount, a statute is not unconstitutional simply because it is under-funded to fulfill its purposes. Furthermore, the state does not have a legal duty to provide welfare benefits. This is not a case where the state is granting "basic subsistence to one class of needy residents while denying

it to an equally needy class of residents." *Starns v. Malkerson*, 326 F.Supp. 234, 238 (Minn. 1970), *aff'd*, 401 U.S. 985 (1971), (quoting *Kirk v. Board of Regents*, 273 Cal. App. 2d 430, 440, 78 Cal Rptr. 260, 266-67 (1969), *appeal dismissed*, 396 U.S. 664 (1970)).

The respondents have failed to show that the intent of the statute is to deter travel. I do not agree that the intent of the legislature was to deter the transient population from coming into the State for benefits, nor to punish the decision of indigents to migrate to Minnesota. Had this been the purpose, the legislature could have enacted legislation to provide vouchers for shelter and other needs in lieu of cash grants, or eliminated the entire general assistance/work readiness grant programs. Rather, the legislature chose to carefully craft the 1991 amendment so as to make the amount of welfare benefits a neutral factor in a person's decision to migrate to Minnesota. Although it does not totally remove the incentive for all persons, "if the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' " *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911). As we noted in another case, the legislature is granted

> 'the exercise of a wide scope of discretion * * * .'
>
> * * *
>
> [i]f any reasonable distinction between the subjects * * * can be found, the legislative classification should be sustained.

*Anderson v. City of St. Paul*, 226 Minn. 186, 194-95, 32 N.W.2d 538, 543 (1948) (quoting *Whitney v. California*, 274 U.S. 357 (1927)).

We further noted that

> [I]t is not permissible for the courts to inquire into the motives * * * in enacting the ordinance for the purpose of assailing its validity. The motives * * * are wholly immaterial.

*Id.* at 226 Minn. 204, 32 N.W.2d 548.

Finally, I conclude that a person is never punished for exercising their right to travel by section 256D.065 since an eligible person receives at least as much, if not more, than he or she received in his or her previous state of residence, unless that amount exceeds the statutory maximum. A single person would receive less only if they migrated from a state where they received more than $203, the statutory maximum for residents of longer duration in Minnesota. If a single person migrated from a state where they received less that $122 per month, or no grant at all, he or she is actually rewarded for exercising his or her right to travel by receiving a grant of $122 per month for six months in Minnesota.[1]

The named representatives of the class illustrate this fact. Two each received $122 per month in Minnesota, although they had received nothing at all in their previous state of residence. The other two named representatives received the same amount in Minnesota that they

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[1] Many states provide general assistance at an amount less than Minnesota, and many states provide no general assistance whatsoever.

received in their last state of residence. Clearly, of these four respondents, none were penalized and two were rewarded under section 256D.065 for exercising their right to travel to Minnesota.

Although the United States Supreme Court found a 1-year residency requirement prior to receiving non-emergency care infringed upon the right to travel and was therefore unconstitutional in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), that case is distinguishable. Unlike *Memorial Hospital*, the respondents do not have to wait one year before receiving any benefits under section 256D.065; grants, albeit at a reduced level, are received immediately if the person is eligible. The court stated that medical care is a basic necessity of life that could not be denied to newcomers in *Memorial Hospital;* although food and shelter are also basic necessities, the Supreme Court has never imposed a duty upon the states to provide a standard of living for its residents, nor established a right for anyone to receive welfare assistance. *See, Lavine v. Milne*, 424 U.S. 577, 584 n.9 (1976) (citing *Dandridge v. Williams*, 397 U.S. 471 (1970)).

There is language in some United States Supreme Court cases which might be read to dictate that the right to travel is implicated whenever a state treats a new resident differently than longer term residents.

> [T]he right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents.

*Memorial Hospital*, 415 U.S. at 261. This statement seems to suggest that the right to travel can be implicated not only if a migrant is treated less favorably in the new state of residence than in the previous state of residence, but also if, within the new state, the newcomer is treated less favorably than other residents. In another case the Court says

> the right to migrate protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents.

*Soto-Lopez*, 476 U.S. at 904.[2]

> And then again the Court said
>
> [t]he State may not favor established residents over new residents based on the view that the State may take care of 'its own,' if such is defined by prior residence.

*Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 623 (1985).

The use of this language has blurred the distinction between equal protection and the right to travel. However, these are separate challenges which must be analyzed on their own merits. I do not believe that the Court intends to conclude that the right to travel is implicated every time an equal protection challenge is presented. *See, e.g., Zobel v. Williams*, 457 U.S. 55 (1982). This

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[2] But in note 5 the same court says that not all waiting periods are constitutionally impermissible.

would open a floodgate of appeals requiring strict scrutiny. Surely the Court does not intend to re-enter the *Lochner* era.[3]

The right to travel is not implicated by this 1991 amendment because there has been no showing of actual deterrence or that the legislative intent in enacting the 1991 amendment was to deter travel. When determining whether a person is penalized for exercising their right to travel, the appropriate focus is not whether the person is treated differently than longer term residents, but whether the benefits the person is eligible for are less than those received, if any, in their last state of residence. I doubt a person contemplating migration would study the classifications in a state statutory scheme and then "hesitate" to migrate. A person might look at the resources presently available and compare them to what will be available after migration: If he or she would have the same or more resources than at the present, no hesitation would be induced by the 1991 amendment. Unlike the "hesitation" in *Shapiro* and *Memorial Hospital,* newly arrived indigents **do** have the possibility of "falling back on state welfare assistance."

This is not, as the majority claims, a comparison of indigents newly arrived in Minnesota with indigents in other states, or an attempt to evaluate the cost of living in various states as the California court seems to require in *Green v. Anderson,* 811 F.Supp. 516 (E. D. Calif. 1993). It

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[3] *Lochner v. New York,* 198 U.S. 45 (1905) lends its name to a period of time for which the Supreme Court has been severely criticized for conducting substantive due process review to invalidate laws that did not involve personal liberties.

merely looks at the status of an indigent person's economic resources immediately before and after the move to Minnesota to determine if that person has been penalized by the 1991 amendment for exercising their right to travel. If an indigent has the same grant both before and after their move to Minnesota, the loss, disadvantage or hardship suffered, if any, is due to the higher cost of living in Minnesota, not because her or his grant level is temporarily lower than that available to longer term residents.

Even if the exercise of the right to travel were implicated, "[N]ot every penalty on interstate travel triggers the compelling-state-interest test." *See Davis v. Davis*, 297 Minn. 187, 192, 210 N.W.2d 221, 225 (1973); *see also Soto-Lopez*, 476 U.S. at 905, n.5. In *Davis* we held that a 1-year residency requirement before divorce proceedings was constitutional. *Davis, supra*, at 227. *See also Sosna v. Iowa*, 419 U.S. 393 (1975). In another case, a statute with a 1-year residency requirement for resident tuition at a state university was upheld. *Starns*, 326 F.Supp. 234; *see also Vlandis v Kline*, 412 U.S. 441, 452 (1973); *Sturgis v. Washington*, 368 F.Supp. 38 (W.D. Wash. 1973), *aff'd*, 414 U.S. 1057 (1973).

Discussing *Shapiro*, the court in *Memorial Hospital* said that "any durational residence requirement impinges to some extent on the right to travel" but that "[t]he amount of impact required to give rise to the compelling-state-interest test was not made clear." *Memorial Hospital* 415 U.S. at 256-57. The Court said the factors to consider were whether the waiting period deters migration and the extent to which the residence requirement penalized

the right to travel. *Id.* at 257. Since there is neither deterrence nor penalty by the 1991 amendment, strict scrutiny is not required even if it "impinges to some extent on the right to travel."

The cases in which the Court has overturned statutes on right to travel grounds have either involved waiting periods for longer than 6 months or a complete denial of benefits, usually for 1 year. *See Shapiro, supra; Memorial Hospital, supra.* The 1991 amendment is not that harsh. The residency requirement is for only six months and benefits are not withheld if applicants are otherwise eligible.

The other cases in which the Court has struck down statutes on right to travel grounds involve situations where the classifications created are permanent and the treatment of the classes never equalizes. *See Zobel, supra; Soto-Lopez, supra.* Our legislature has not created this type of permanently unequal system in which new residents will never "catch up" with longer term residents; benefits equalize after 6 months.

Since the respondents have failed to prove that the 1991 amendment implicates the right to travel by any of the means indicated in *Soto-Lopez,* strict scrutiny is not appropriate. Minn. Stat. § 256D.065 need only be rationally related to a legitimate government purpose to survive constitutional review. *Hooper v. Bernalillo County Assessor,* 472 U.S. 612, 618 (1985); *New Orleans v. Dukes,* 427 U.S. 297 (1976); *Weber v. Aetna Casualty & Surety Co.,* 406 U.S. 164, 172 (1972).

The state has a legitimate purpose to be fiscally responsible and to conserve limited funds. The projected

savings of $890,000 in the first fiscal year, and $1 million or more in successive years is directly and rationally related to this purpose. The legislature could have terminated the entire general assistance/work readiness programs, as Michigan has recently done, but instead chose to preserve these grants and maximize the limited welfare resources available. Similarly, we upheld a statutory scheme under which $100 in "gate-pay" was made available to prisoners upon their release from prison, unless they had more than $100 set aside from their work earnings. *Thomale v. Schoen*, 309 Minn. 285, 244 N.W.2d 51 (1976). We reasoned that the legislature ensured a "greater gratuity than it would have otherwise been able to give if it had provided a flat payment to all parolees regardless of the amount accumulated in their funds." *Id.*, 309 Minn. at 288, 244 N.W.2d at 53.

Since I conclude that Minn. Stat. § 256D.065 does not implicate the right to travel and survives constitutional scrutiny, I must consider the remaining two questions presented.

The Equal Protection Clause contained in the Fourteenth Amendment of the United States Constitution provides that persons similarly situated be treated alike unless a rational basis exists for discriminating among them. However, the state is not required to treat all citizens identically, rather

> [the state] must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on

> the practical ability of the State to remedy every ill.

*Plyler v. Doe,* 457 U.S. 202, 216 (1982).

Here the respondents' claim does not involve either a suspect classification, as identified by the United States Supreme Court, nor does it implicate a fundamental right.[4] The standard of review to be used when measuring classifications created by a public welfare benefit statute against an equal protection claim was established in *Jefferson v. Hackney,* 406 U.S. 535 (1972), and *Dandridge,* 397 U.S. 471. In *Jefferson,* the United States Supreme Court used the minimum scrutiny of the rational basis test when it upheld a Texas statute which established a percentage reduction factor to be applied to apportion available welfare benefits among various recipients. *Jefferson,* 406 U.S. at 546.

The rational basis analysis is the same as that used in my determination that the right to travel is not implicated. The state has a legitimate purpose in being fiscally responsible, and 256D.065 is rationally related to that purpose.

This is not like the statute in *Zobel v. Williams, supra.* In *Zobel,* the United States Supreme Court held that the creation of a fund to pay dividends from oil reserves in different amounts depending on length of residence was unconstitutional on equal protection grounds. *Id.* at 65. In

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[4] The United States Supreme Court has consistently held that there is no constitutional right to welfare benefits, and that states have wide latitude in setting welfare benefits. *Dandridge,* 397 U.S. at 480; *Lavine,* 424 U.S. at 584, n. 9.

*Zobel*, the classifications were permanent and the dividends were derived from a natural resource and were a continuing, permanent entitlement, guaranteed by constitutional amendment. *Id* at 56-57. On the contrary, these general assistance/work readiness benefits involved are not a constitutional right and the classification involved is only temporary.

I am aware of two other states which have considered the constitutionality of somewhat similar statutes. In *Opinion of the Justice to the House of Representatives*, 257 N.E.2d 94 (Mass. 1970), the Supreme Judicial Court of Massachusetts gave its opinion on a bill pending before the Massachusetts House of Representatives which would have limited welfare benefits for 2 years to the amount the new resident had received in the state of the person's last domicile. *Id.* at 94. The court concluded that if the sole purpose of the proposed bill was to deter the migration of indigent people, it would violate the Equal Protection Clause of the United States Constitution. *Id.* at 95.

In *Jones v. Milwaukee County*, 485 N.W.2d 21, 22 (Wis. 1992), the statute involved required persons to be residents of the state for at least 60 consecutive days before they would be eligible for any welfare relief.[5] The Wisconsin Supreme Court found it to be constitutional under both the state and federal constitutions. *Id.* at 22. The court relied upon *Dandridge*, which held that the state could place a ceiling on welfare benefits to encourage

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[5] Several exceptions were provided for by the statute. *Id.* at 23-24.

employment and avoid discrimination between welfare families and families of the working poor. *Id.* at 27.

Minn. Stat. § 256D.065 falls between these two examples. The 6-month residency requirement is far less than the 2 years proposed in Massachusetts, but more than the 60 days involved in the Wisconsin statute. However, in Wisconsin, all aid is withheld for 60 days, whereas in Minnesota reduced benefits are granted during the 6 months.

I conclude the statute passes the minimal scrutiny of the federal rational basis test and therefore does not violate the Equal Protection Clause of the United States Constitution. In doing so I agree with the *Dandridge* Court, which wrote:

> We do not decide today that the * * * regulation is wise, that it best fulfills the relevant social and economic objectives * * * , or that a more just and humane system could not be devised. * * * But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards * * * But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.

*Dandridge*, 397 U.S. at 487.

Plaintiff-respondents further assert, and the court of appeals agreed, that the six-month residency requirement

for full general assistance benefits violates the Equal Protection Clause of the Minnesota Constitution. The court of appeals was of the view that our recent case, *State v. Russell*, 477 N.W.2d 886, 888-89 (Minn. 1991), created an equal protection standard "which is different and more stringent than its federal counterpart," and that, under this *Russell* standard, the 1991 amendment must be found unconstitutional. *Mitchell*, 487 N.W.2d at 904.

Our case law on state equal protection analysis has not always been characterized by doctrinal constancy, and this case seems an appropriate occasion to review briefly and to clarify that analysis. Our equal protection "clause" is an un-enumerated but inherent constitutional right, found and confirmed in Minn. Const. art. 1, § 16 and included in art. 1, § 2. *Russell*, 477 N.W.2d at 893 (Simonett, J., concurring). Under this equality guaranty, "persons similarly situated are to be treated alike unless a sufficient basis exists for distinguishing among them." *Id.*

As the concurring opinion in *Russell* points out, over the years our state equal protection approach has at times been intertwined with our constitutional prohibition against special legislation (art. 12, § 1), our state provision for uniformity in taxation (art. 10, § 1), and the federal equal protection analysis. *Id.* at 893-94. *See, for example, Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979). *Miller* cites *Montgomery Ward Co. v. Comm'r of Taxation*, 216 Minn. 307, 12 N.W.2d 625 (1943), which relies on the federal rational basis test, but then also cites *Schwartz v. Talmo*, 295 Minn. 356, 205 N.W.2d 318 (1973), appeal dismissed, 414 U.S. 803 (1973) for what has come to be called the "three part test." *Miller, supra* at 356. *See* footnote 5, *infra*. This "three part test" can be traced back

to *Loew v. Hagerle Brothers*, 226 Minn. 485, 33 N.W.2d 598 (1948), and even beyond; interestingly, *Loew* was really a special legislation challenge, not an equal protection case. It is this "three part test," at times slightly reworded, which appears eventually in *Russell*. Consequently, it is not surprising that the question has been raised whether the state's "rational basis" test is more strict than the federal rational basis test. *See, e.g.*, McKnight, *Minnesota Rational Relation Test: The Lochner Monster in the 10,000 Lakes*, 10 Wm. Mitchell L. Rev. 709 (1984); *Haskell's, Inc. v. Sopsic*, 313 N.W.2d 921 (1981).

In 1983 we attempted to clarify our equal protection test in *AFSCME Councils 6, 14, 65 and 96 v. Sundquist*, 338 N.W.2d 560 (Minn. 1983). There we upheld the constitutionality of legislation requiring state employees to make additional payments into a pension fund. The case lent itself to the federal rational basis test. We also upheld the legislation, however, under our state equal protection guaranty and stated:

> We therefore reiterate that the prohibitions against arbitrary legislative action embodied in the state equal protection clause * * * are coextensive with those afforded by the federal equal protection clause.

*Id.* at 570 n. 12. We added:

> We have recognized that the standard applied to claims brought under the state equal protection clause * * * is **the same as that applied to claims brought under the federal equal protection clause.**

*Id.* at 569 n. 11 (emphasis added). Yet, notwithstanding *Sundquist*, we again raised, but did not answer, the question whether our state rational basis test was more strict than the federal test in *Bernthal v. City of St. Paul*, 376 N.W.2d 422, 424-25 (Minn. 1985).

This brings us, then, to *State v. Russell, supra*, where this court applied the "three part test,"[6] stating it was "our stricter standard of rational basis review," and then held unconstitutional a statute that would have survived the federal rational basis test. *Russell*, 477 N.W.2d at 889. The particular facts of *Russell*, however, must be kept in mind. There the state criminal statute made both possession of three or more grams of crack cocaine and possession of ten or more grams of cocaine powder the same third degree offense. The statute was found to have disparate impact upon African-Americans because crack

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[6] The "three part test" as given in *Russell* is:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

*State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991), (quoting *Wegan v. Village of Lexington*, 309 N.W.2d 273, 280 (Minn. 1981), which, in turn, quotes *Guilliams v. Comm'r of Revenue*, 299 N.W.2d 138, 142 (Minn. 1980)).

cocaine was used primarily by blacks while cocaine powder was used primarily by whites. Although the statute was neutral on its face and there was no evidence of any discriminatory purpose, we held that the disparate impact on a suspect class required more than minimal rational basis scrutiny. The irony of the statute, we noted, was that "the challenged classification appears to impose a substantially disproportionate burden on the very class of persons whose history inspired the principles of equal protection." *Id.* at 889. As Justice Simonett's concurrence pointed out, the court's analysis was something less than federal "strict scrutiny" and something more than federal "rational basis"; and that this mid-level equal protection scrutiny was appropriate "to preserve a proper regard for the civil liberties of this state's people while at the same time according the legislative branch the deference which the separation of powers doctrine requires." *Id.* at 894.

Equal protection methodology is designed in large part to expand or contract the degree of deference to be accorded the legislative judgment when it creates classes treating persons within and without the class differently. For this purpose, federal equal protection analysis has three "levels" of scrutiny: First is the level of least deference called strict scrutiny for cases implicating fundamental rights or involving suspect classes, where there must be a necessary relation to a compelling government interest and the legislation must be narrowly drawn. *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966). Next is a mid-level of intermediate scrutiny for cases involving semi-suspect classes, where there must be shown a substantial relationship to an important government interest. *Craig v. Boren*,

429 U.S. 190 (1976). Finally, there is the minimal scrutiny of the rational basis test for all remaining classes, where all that is required is a rational relation to a legitimate government interest. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972).

What emerges, I think, from our cases and what best reconciles them, is an analysis which places the *Russell* three part test within the mid-level of scrutiny. In *Russell*, the facial neutrality of the statute was compromised by the substantial, although inadvertent, disparate impact on a particular racial group; this special situation fits best within an intermediate or mid-level degree of scrutiny. Consequently, I would adopt the following analytical framework for our state constitution's equal protection analysis. First, strict scrutiny requiring a necessary relation to a compelling state interest should apply when a fundamental right is implicated or if the legislation involves a suspect class. Next, mid-level scrutiny should apply for semi-suspect classes and for legislation which is neutral on its face but which has a disparate impact upon a suspect class. The test for mid-level scrutiny should be the *Russell* "three part" test. *See* footnote 5, *infra*. Finally, for remaining classifications, the minimal scrutiny of the rational basis test should apply, requiring a rational or reasonable relation to achieving a legitimate state interest. *See AFSCME*, 338 N.W.2d at 569.

The "three part test" should be reserved for mid-level scrutiny. A separate minimal level of scrutiny would remain, measured by the traditional rational basis analysis. Actually, this approach has been implicit in the equal protection cases we have decided since *Russell*, where we have declined to apply the three part *Russell*

test and have instead used minimal rational basis scrutiny. *See Clabo v. Bor-Son Constr. Co.*, 481 N.W.2d 47, 48 (Minn. 1992) (use of construction industry weekly wage to determine benefits); *Peterson v. Stafford*, 490 N.W.2d 418, 423 (Minn. 1992) (challenge to statutory ballot form and designation of incumbency). *See also John Hancock Mutual Life Ins. Co. v. Comm'r of Revenue*, 497 N.W.2d 250 (Minn. 1993) (federal rational basis test used to determine constitutionality of income tax treatment of insurance premium).

I turn now to this case. The statute involved is economic legislation, concerning the allocation of the state's financial resources to a social welfare program. No fundamental right is implicated nor is a suspect class or semi-suspect class involved. Consequently, I apply the rational basis test. The legislation will not be set aside if any set of facts may reasonably be conceived to justify the classification. *See, e.g., AFSCME, supra; Thomale*, 309 Minn. at 288, 244 N.W.2d at 53 (1976). Here the state has a legitimate purpose in safeguarding its financial integrity: The classification on the basis of residency with adjusted benefit levels is rationally related to that purpose. I would hold that Minn. Stat. § 256D.065 (1992) does not violate the equal protection guaranty of our state constitution.

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**COYNE, Justice (concurring specially).**

Because I have concluded, albeit reluctantly, that the United States Supreme Court has ruled that any statute

which bases different treatment on a fixed point residency requirement constitutes an unconstitutional implication of the right to travel and because I recognize that we are bound by the Supreme Court's determination, I concur in the result reached by the majority. It does seem to me, however, that fixed point residency requirements can have any one of three effects upon the right to travel. The operation of the statute may burden the right to travel or it may provide an incentive to travel or it may simply be neutral with respect to the right to travel. I consider the Minnesota statute strictly neutral as it impinges upon the right to travel because a resident newly arrived in Minnesota will be eligible for general assistance in an amount not less than that person was receiving in the state from which he or she had emigrated up to the amount of general assistance to which the most senior Minnesota resident is entitled. At a time when most states are struggling to remain solvent, I can see no earthly reason for limiting a state's option to the total discontinuance of general assistance or of risking financial ruin.

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**

C3-92-239

Ramsey County
District Court File #C8-91-11691

Foley, Judge*

Charles Mitchell, et al.,

Respondents,

vs.

Natalie Haas Steffen, in her official capacity as Commissioner, Minnesota Department of Human Services,

Appellant.

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Filed June 9, 1992
Office of Appellate Courts

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* Retired judge of the Court of Appeals, acting by appointment pursuant to Minn. Const. art. VI, § 2.

## SYLLABUS

1. Minn. Stat. § 256D.065 (Supp. 1991) creates invidious classifications between bona fide residents, and impinges upon the right to travel. Since it has not been shown that the statute is necessary to achieve some compelling governmental purpose, it violates the Equal Protection Clause of the United States Constitution.

2. Minn. Stat. § 256D.065 (Supp. 1991) fails the rational basis test, and violates the equal protection clause of the Minnesota Constitution.

3. A state law which only applies to state residents is not subject to challenge under the Privileges and Immunities Clause of the United States Constitution.

4. An award of retroactive benefits which is in the form of equitable relief is not barred by the doctrine of sovereign immunity.

**Affirmed in part, reversed in part and remanded.**

Considered and decided by Huspeni, Presiding Judge, Peterson, Judge, and Foley, Judge.

## OPINION

**FOLEY,** Judge

Respondents Charles Mitchell, et al. brought this class action under 42 U.S.C. § 1983 against appellant Natalie Haas Steffen, in her capacity as Commissioner of the Department of Human Services. Respondents' suit challenges the constitutionality of Minn. Stat. § 256D.065 (Supp. 1991), on the grounds that it implicates the right to travel and violates the Equal Protection Clause of the

United States Constitution. Respondents' complaint also alleges the statute violates the equal protection clause of the Minnesota Constitution, and the Privileges and Immunities Clause of the United States Constitution. Respondents seek injunctive and declaratory relief, and an award of retroactive benefits for class members.

In response to cross motions for summary judgment, the district court ruled the case should proceed as a class action pursuant to Minn. R. Civ. P. 23.01 and 23.02(b) (class action maintainable where final injunctive or declaratory relief appropriate), granted summary judgment to respondents on the claim that the statute is unconstitutional under the Equal Protection Clause of the United States Constitution, and enjoined appellant from enforcing or in any manner implementing the statute. Respondents' claim for retroactive benefits was denied.

Both parties appeal. We affirm the district court's grant of summary judgment and injunctive relief to respondents, but reverse its refusal to award retroactive benefits and remand with directions.

This case is one of first impression in this state. Because of its importance, we expedite our decision.

## FACTS

Minn. Stat. § 256D.065 (Supp. 1991), effective July 1, 1991, relates to general assistance and work readiness benefits. Under the 1991 amendment to the statute, an applicant without minor children who has resided in Minnesota less than six months receives 60 percent of the amount available to a person who has resided in the state

more than six months. Minn. Stat. § 256D.065 (Supp. 1991). The minimum grant is $122 per month for a single applicant or $156 for married applicants, figures which represent 60 percent of the $203 and $260 maximum monthly grants received by persons who have resided in the state over six months. *See* Minn. Stat. § 256D.06, subd. 1 (1990). If, however, an applicant actually received benefits in the last state of residence, the applicant may receive benefits equal to the lesser of: (1) the benefits actually received in the last state of residence, or (2) the maximum benefits allowable under Minn. Stat. § 256D.06, subd. 1. Minn. Stat. § 256D.065 (Supp. 1991).

Respondents are unmarried adults without children who have resided in Minnesota less than six months, and who applied for general assistance or work readiness benefits after July 1, 1991. None of the named respondents came to Minnesota for the purpose of seeking public assistance benefits. For instance, one is disabled, three are seeking permanent employment, and one came to Minnesota to be closer to his three children and former wife. All received grant amounts ranging from the minimum grant level of $122, to $165, which was the grant level one respondent received in the state of Illinois.

Respondents claim Minn. Stat. § 256D.065 (Supp. 1991) (also referred to as "the statute") has caused them to live without adequate income to meet their basic needs, particularly in the area of housing. They presented affidavits from a number of human services providers, who state no housing is available for $122 per month in the cities of St. Cloud, Moorhead, or Minneapolis, or in Anoka County. These affiants all tend to conclude that the

reduced benefit amounts will only make a difficult situation much worse.

Appellant claims the statute was enacted in response to a request in 1990 by then Governor Rudy Perpich to reduce the Department of Human Service's (department) budget by $200 million. Department staff researched a variety of options, which included eliminating the general assistance, work readiness, and emergency assistance programs entirely. The Department estimates the statute will save the state approximately $890,000 in fiscal year 1992, $1 million in 1993, $1.2 million in 1994, and $1 million in 1995.

Legislative history indicates that the statutory language was not considered by legislative committee, and was offered for the first time in the form of amendments to separate companion bills on the floor of each house of the legislature. Legislative debate on these proposed amendments focused on the concern of legislators that people move to Minnesota in order to collect higher public assistance benefits.

Proponents of the amendments cited anecdotal evidence of individuals moving to Minnesota "just for the welfare benefits" and of the general perception that welfare benefits in Minnesota are higher and easier to collect than in other states. Opponents to the amendments argued that the language was clearly unconstitutional, that other methods, such as weekly grants, tend to better address the problem, and that there is a lack of studies or evidence to support the perception that people come to Minnesota solely to collect higher benefits.

In support of its motion for summary judgment, respondents submitted excerpts from two such studies, one by the Legislative Auditor prepared in 1988, and the other prepared by the Department in 1991. Both studies tend to conclude that while some individuals are drawn to the state by its welfare grant levels, the net effect is negligible.

With respect to the general assistance and work readiness programs, the 1991 study stated:

> Unlike AFDC, General Assistance/Work Readiness is entirely state and locally funded, and is not offered by all states or even all counties within a state. Many of the states west of Minnesota do not have a GA/WR program. Although $203 a month is not much to live on, it is more than is offered in many other states.
>
> A major problem perceived with General Assistance/Work Readiness is transient recipients. These people have no permanent home, and some admit visiting Minnesota mainly to collect GA/WR benefits. The extent of this type of migration has not been established, but in the communities that have larger numbers of transients, it is believed to be a problem.

Minnesota Dep't of Human Servs., *Welfare Migration Study: A Report to the 1991 Legislature*, at 23 (1991). The study concluded:

> The issue of transiency is distinct from migration. The GA/WR program has long been believed to attract transients to Hennepin County who stayed just long enough to pick up a $200 check. This perceived problem was

> addressed by a change in State law which permitted Hennepin County to issue weekly grants and/or vouchers for food and shelter to GA/WR applicants unable to verify local residence. It appears that this change in Hennepin County's payment policies caused some transients to go to other counties for General Assistance. As of October 1990, the option to issue weekly GA/WR grants and/or vouchers for food and shelter became available to all counties. This option is expected to permit counties to control and limit use of General Assistance/Work Readiness by transients who are not residents of Minnesota.

*Id.* at 25.

## ISSUES

1. Did the district court err in concluding the statute burdens the right to travel and violates the Equal Protection Clause of the United States Constitution?

2. Does the statute violate the equal protection clause of the Minnesota Constitution?

3. Did the district court err in concluding this case does not present a claim under the Privileges and Immunities Clause of the United States Constitution?

4. Did the district court err in concluding respondents are not entitled to retroactive benefits?

## ANALYSIS

Summary judgment is appropriate when there is no genuine issue as to any material fact and one party is

entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. The parties here agree that there are no genuine issues of material fact, and that the question presented is whether the district court properly applied the law.

A challenged statute bears a presumption in favor of constitutionality. *McGuire v. C & L Restaurant, Inc.*, 346 N.W.2d 605, 611 (Minn. 1984). This court must "proceed with extreme caution before declaring a statute unconstitutional and do so only when absolutely necessary." *Id.* Finally, "[a] party challenging a statute on constitutional grounds has the onus of demonstrating beyond a reasonable doubt that the statute violates a provision of the constitution." *Id.*

I

At issue in this case is the constitutionality of a statute that creates two classes of needy residents indistinguishable from each other except that one is composed of residents who have resided in the state over six months, and the other consists of residents who have resided in the state less than six months. On the basis of this sole difference, the statute discriminates between bona fide residents[1] by reducing the amount of general

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[1] The statute in this case does not pretend to distinguish between bona fide residents of the state and mere transients. Indeed, a distinction has been made between bona fide residence requirements and durational or fixed date residence requirements, which treat established residents differently based on the time they migrated into a state. *See Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 903 n.3, 106 S.Ct. 2317, 2321 n.3 (1986). This distinction is explained by the Supreme Court as follows:

assistance and work readiness benefits available to many of the newer residents. Where a state law unequally distributes benefits among otherwise qualified bona fide residents, it not only raises equal protection concerns, but it may also impermissibly infringe on the constitutionally protected right to travel.

**Right to Travel**

The right to travel, or the right of free interstate migration, is recognized as a basic, fundamental right under the United States Constitution. *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 901-02, 106 S.Ct. 2317, 2320 (1986). A state law will implicate the right to travel when it "actually deters such travel, when impeding travel is its primary objective, or when it uses 'any classification which serves to penalize the exercise of that right.' " *Id.* at 903, 106 S.Ct. at 2321 (citations omitted).

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> A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement * * * [generally] does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residents.

*Id.* (quoting *Martinez v. Bynum*, 461 U.S. 321, 328-29, 103 S.Ct. 1838, 1842-43 (1983)). In this case, appellant does not dispute that respondents are bona fide residents or otherwise attempt to characterize the statute as a bona fide residence requirement.

Appellant notes the statute has clearly not impeded the named respondents' rights to travel. Appellant further insists the statute was "carefully crafted so that it would *not* burden the right of needy persons to travel." She asserts that by making the receipt of welfare benefits a neutral factor in an individual's decision to move to the state, the statute was designed to remove any incentive the receipt of higher welfare benefits might provide to migrating individuals. As a result, appellant reasons, the statute does not deter migration or otherwise penalize the exercise of the right to travel.

While there is no evidence before us that the challenged statute actually deterred anyone from traveling to Minnesota, such evidence is not necessary to find an impermissible burden has been placed on an individual's right to travel. *See Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 257-58, 94 S.Ct. 1076, 1082 (1974). As respondents note, the issue of actual deterrence is largely irrelevant to this case because it would be nearly impossible to find individuals who did not move to Minnesota due to the reduced level of public assistance.

In any event, deterrence may almost be assumed in this case. The Supreme Court has recognized that an indigent who desires to migrate to a state that refuses to give new residents any public assistance "will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance." *See Shapiro v. Thompson*, 394 U.S. 618, 629, 89 S.Ct. 1322, 1328 (1969). Similarly, an indigent who desires to migrate to Minnesota may hesitate if he or she knows only 60 percent of the amount necessary to live in Minnesota will be available. This assumes, of course, that the

$203 grant amount available to established Minnesota residents is the amount "necessary to maintain a subsistence reasonably compatible with decency and health" in Minnesota. Minn. Stat. § 256D.01, subd. 1 (1990) (purpose of general assistance statute).

In addition, the legislative history of the statute establishes that its primary objective was to deter migration of low income individuals into Minnesota. Such a purpose is constitutionally impermissible. *See Shapiro*, 394 U.S. at 631, 89 S.Ct. at 1329. The statements made by legislators during debate on the statute clearly show their desire to discourage people from moving into Minnesota solely because of the availability of higher public assistance benefits. Such statements are properly considered in determining the legislature's purpose in adopting a statute. *See Handle With Care, Inc. v. Department of Human Servs.*, 406 N.W.2d 518, 522 (Minn. 1987).

Finally, the substantial reduction in the amount of benefits effectively penalizes new residents for exercising their rights to travel. As the evidence presented by respondents shows, the level of benefits available under the statute is insufficient to provide for the basic necessities of life. The fact that the statute reduces, rather than eliminates, benefits does not change the conclusion that it is an unconstitutional penalty on the right to travel. *See, e.g., Memorial Hosp.*, 415 U.S. at 260, 94 S.Ct. at 1083 (fact that challenged statute, which prohibited new low-income residents from receiving free in-patient hospital care, still allowed free emergency room care, did not save it from being unconstitutional).

**Equal Protection**

Appellant nevertheless argues that even if the statute penalizes the right to travel, "not every penalty on interstate travel triggers the compelling-state-interest test." *See Davis v. Davis*, 297 Minn. 187, 192, 210 N.W.2d 221, 225 (1973) (one-year residency requirement for plaintiff in divorce action not violative of Equal Protection Clause). The United States Supreme Court has acknowledged that not all waiting periods are constitutionally impermissible. *See Soto-Lopez*, 476 U.S. at 905 n.5, 106 S.Ct. at 2322 n.5. For example, the Court has upheld as constitutional one-year residency requirements for maintaining an action for divorce and one-year waiting periods for receiving resident tuition at state universities. *Id.*

However, where a residency requirement involves governmental privileges or benefits necessary to basic sustenance, even temporary deprivations or reductions tend to be severe and work serious inequities among otherwise qualified residents. *See id.* at 907, 106 S.Ct. at 2323. The minimum grant levels available under the statute are insufficient to provide for the basic necessities of life in Minnesota, particularly housing. Thus, the deprivations caused by the statute are severe and amount to a penalty on new residents, requiring heightened scrutiny under the Equal Protection Clause.

To survive such scrutiny, the statute must be shown to be necessary to achieve some compelling governmental purpose. *Id.* at 904-06, 106 S.Ct. at 2321-22; *Shapiro*, 394 U.S. at 634, 89 S.Ct. 1331. It must also be shown that the statute uses the least burdensome means of accomplishing its purpose. *Dunn v. Blumstein*, 405 U.S. 330, 343, 92

S.Ct. 995, 1003 (1972). The burden on a state is "almost always insurmountable," and a statute will rarely survive the strict scrutiny test. *Eddleman v. Center Township of Marion County*, 723 F. Supp. 85, 90 n.10 (S.D. Ind. 1989).

Appellant first asserts the statute was intended to reduce state expenditures in the face of a fiscal crisis. While a state may legitimately attempt to limit its expenditures, it may not accomplish such a purpose by "invidious distinctions" between classes of its residents. *Shapiro*, 394 U.S. at 633, 89 S.Ct. at 1330.

> [A] State may not protect the public fisc by drawing an invidious distinction between classes of its citizens, so [the State] must do more than show that denying free medical care to new residents saves money. The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement which, in effect, severely penalizes the exercise of the right to freely migrate and settle in another State.

*Memorial Hosp.*, 415 U.S. at 263, 94 S.Ct. at 1085.

Appellant also asserts the statute was intended to make the receipt of public assistance benefits a neutral factor in a person's decision to move to Minnesota. Again, such a purpose is constitutionally impermissible, whether characterized as the removal of an incentive, as a deterrence, or as an attempt to make receipt of public assistance benefits a neutral factor in an individual's decision to move to the state:

> [A] State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally.

> Implicit in any such distinction is the notion that indigents who enter a State with the hope of securing higher welfare benefits are somehow less deserving than indigents who do not take this consideration into account. But we do not perceive why [such an individual] should be regarded as less deserving because she considers, among other factors, the level of a State's public assistance. Surely such [an individual] is no less deserving than [another] who moves into a particular State in order to take advantage of its better educational facilities.

*Shapiro*, 394 U.S. at 631-32, 94 S.Ct. at 1330.

Even assuming such a purpose is permissible, the statute in this case is not necessary to achieve such an objective. A statute affecting a fundamental right must be drawn with "precision." *Dunn*, 405 U.S. at 343, 92 S.Ct. at 1003; *Shapiro*, 394 U.S. at 631, 89 S.Ct. at 1329-30. The 1991 study by the Department found that only 6.4 percent of new public assistance recipients move to Minnesota because of the higher level of benefits. Nevertheless, the statute is all-inclusive, and reduces the benefits of all new residents.

Finally, other alternative means are better designed to solve the problems discussed by the legislature when enacting the statute. As noted in the 1991 study by the Department, a distinction must be made between migration and transiency. From their comments, the legislators seemed most concerned with transients, not with indigents who had migrated to the state to establish residency here. As further noted in the 1991 study, counties may now issue checks or vouchers for food and shelter on a weekly basis to transient indigents unable to verify

local residence. Such steps are better tailored to address the concerns raised by the legislators.

In conclusion, by substantially reducing the level of general assistance or work readiness benefits available to new residents, the statute creates invidious classifications between otherwise bona fide residents and impinges upon new residents' rights to travel. Appellant has not met her heavy burden of showing that the statute is necessary to achieve some compelling governmental purpose. The district court therefore did not err in concluding the statute violates the Equal Protection Clause of the United States Constitution, and in granting summary judgment to respondents.

## II

The district court found it unnecessary to decide whether the statute violated the equal protection clause of the Minnesota Constitution, article I, section 2. Respondents urge that we address this issue "to assure that Minnesota's constitutional protections are maintained for the benefit of this state's residents and will not be subject to attack in the United States Supreme Court."

In *State v. Russell*, 477 N.W.2d 886, 888-89 (Minn. 1991), the supreme court articulated a rational basis test under the Minnesota Constitution which is different and more stringent than its federal counterpart. That test[2] requires:

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[2] Appellant urges that this stricter test applies only when analyzing distinctions made on the basis of race. *See State v. Russell*, 477 N.W.2d 886, 889 (Minn. 1991) ("It is particularly appropriate that we apply our stricter standard of rational basis

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

*Id.* at 888.

The statute at issue here fails to pass scrutiny under this rational basis test. In order to meet the first factor, the state must provide more than anecdotal support for creating a classification that adversely affects one group over another, particularly when such support is contrary to studies prepared by a state agency. *Id.* at 889-90. In this case, the only support for the creation of the classification is anecdotal, and is contrary to at least two studies prepared by state agencies. Without more factual support, the classification created by the statute appears based upon an "arbitrary rather than a genuine and substantial distinction." *Id.* at 890.

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review in a case such as this where the challenged classification appears to impose a substantially disproportionate burden on the very class of persons whose history inspired the principles of equal protection." However, a careful reading of *Russell* makes it clear that this stricter standard applies when analyzing *any* case under the equal protection clause of the Minnesota Constitution.

The statute also fails because appellant has not shown that the classification created is relevant to its asserted purpose. Again, without more evidence to support the effect the reduced levels of assistance will have on an indigent's decision to migrate to Minnesota, the statute does not further its statutory objective. Moreover, the statute is largely inconsistent with the purpose of the general assistance statute. *See* Minn. Stat. § 256D.01, subd. 1 (1990) (one stated purpose of general assistance is to provide residents with an amount "necessary to maintain a subsistence reasonably compatible with decency and health"). The only evidence presented suggests that the $122 minimum grant level provided by the statute is insufficient to provide even housing, let alone other basic necessities of life.

Finally, even assuming the statute is aimed at legitimate purposes, it employs an illegitimate means to achieve those purposes. The statute is overbroad, and reduces the level of benefits for all new residents, not just those who migrated to Minnesota for the sole purpose of receiving higher benefits. In so doing, the statute creates an irrebuttable presumption that all new residents come to Minnesota to collect higher benefits. The means chosen to effect the statute's purposes are thus constitutionally suspect. We therefore hold that the statute also violates the Minnesota Constitution, article I, section 2.

## III

The district court concluded that this case does not present a claim under the Privileges and Immunities

Clause of the United States Constitution, Article IV, Section 2. We agree.

The Supreme Court rejected a Privileges-and-Immunities-Clause challenge to a similar statute in *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309 (1982). *Zobel* involved an Alaska statute which distributed income derived from natural resources to state residents in varying amounts based on the length of their residency. *Id.* at 57, 102 S.Ct. at 2311. In summarily rejecting a claim under the Privileges and Immunities Clause, the Court reasoned:

> The statute does not involve the kind of discrimination which the Privileges and Immunities Clause of Art. IV was designed to prevent. That Clause "was designed to insure to a citizen of State A who ventures to State B the same privileges which the citizens of State B enjoy."

*Id.* at 60 n.5, 102 S.Ct. at 2312 n.5 (quoting *Toomer v. Witsell*, 334 U.S. 385, 395, 68 S.Ct. 1156 (1948)).

Because the statute here affects only Minnesota residents, we agree with the district court that a claim has not been presented under the Privileges and Immunities Clause. *See* Minn. Stat. §§ 256D.02, subd. 12(a); 256D.05; 256D.051 (1990).

## IV

By notice of review, respondents challenge the district court's refusal to award retroactive benefits. In denying respondents' requested relief, the district court first reasoned a state official acting in her official capacity is not amenable to suit under 42 U.S.C. § 1983. *See Rico v. State*, 472 N.W.2d 100, 104 (Minn. 1991) (state's

unamenability to suit under § 1983 not dispositive of whether action may be brought under any common law theory). The district court next characterized the case as one in tort for deprivation of constitutional rights. The court concluded that even if such an action was recognized in Minnesota, appellant was immune from money damages under the doctrine of sovereign immunity. *See* Minn. Stat. § 3.736, subd. 3(a) (Supp. 1991) (Tort Claims Act); *see also Bird v. State, Dep't of Pub. Safety*, 375 N.W.2d 36, 40 (Minn. App. 1985) (Minnesota Supreme Court has not yet recognized tort for violation of due process rights). Finally, the district court rejected respondents' argument that their claim for retroactive benefits was not barred by the doctrine of sovereign immunity because that claim was equivalent to equitable relief in the form of specific performance, rather than money damages in tort. It is with this last conclusion that we disagree.

If, as the district court concluded, the relief sought here is in the form of money damages, it would unquestionably be barred by the doctrine of sovereign immunity. However, we may examine the underlying *nature* of the relief sought to determine whether sovereign immunity applies. *Cf. Lienhard v. State*, 431 N.W.2d 861, 864 (Minn. 1988) (costs and disbursements not part of claim for compensation for personal injury, but reimbursement of expense of litigating claims and therefore not subject to limitation on tort claims provided by § 3.736).

In *Bowen v. Massachusetts*, 487 U.S. 879, 108 S.Ct. 2722 (1988),[3] the state of Massachusetts sought relief from an action by the Secretary of Health and Human Services refusing to reimburse the state for certain expenditures under the state medical assistance program. *Id.* at 882, 108 S.Ct. at 2726. In determining whether it had jurisdiction to review the action, the Supreme Court had to determine whether the action sought "relief other than money damages" under 5 U.S.C. § 702. *Id.* at 891, 108 S.Ct. at 2731.

The Court first noted that the complaints sought declaratory and injunctive relief, and were not actions for money damages. *Id.* at 893, 108 S.Ct. at 2731. The Court next focused on the monetary aspects of the relief sought, and emphasized that a distinction has long been recognized between money damages and money claimed through specific relief:

> "Damages are given to the plaintiff to *substitute* for a suffered loss, whereas specific remedies 'are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled.' D. Dobbs, *Handbook on the Law of Remedies* 135 (1973). Thus, while in many instances an award of money is an award of

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[3] Appellant urges we should follow an earlier Supreme Court case, *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347 (1974). Interestingly, *Edelman* was not even cited by the majority in *Bowen*. We do not believe *Edelman* is instructive here because it is generally limited to cases involving eleventh amendment concerns. *Id.* at 670-71, 94 S.Ct. at 1359. In such cases, *Edelman* indicates that the court must look at the practical effect of a monetary award, and not at whether it is actually money damages or a form of equitable relief. *Id.* at 667-69, 94 S.Ct. at 1357-58.

> damages, '[o]ccasionally a money award is also a specie remedy.' *Id.*"

*Bowen*, 487 U.S. at 895, 108 S.Ct. at 2732 (emphasis in original) (quoting *Maryland Dep't. of Human Resources v. Department of Health & Human Servs.*, 763 F.2d 1441, 1446 (D.C. Cir. 1985) (Bork, J.)).

The Supreme Court therefore concluded that the action was reviewable because it was not an action for money damages:

> [This case] is not a suit seeking money in *compensation* for the damage sustained by the failure of the Federal Government to pay as mandated; rather, it is a suit seeking to enforce the statutory mandate itself, which happens to be one for the payment of money. The fact that the mandate is one for the payment of money must not be confused with the question whether such payment, in these circumstances, is a payment of money as damages or as specific relief.

*Id.* at 900-01, 108 S.Ct. at 2735 (emphasis in original) (footnote omitted).

*Bowen* has been applied by at least one state court to reject claims of immunity by a state agency similar to the claims made here by appellant. In *Ohio Hosp. Ass'n v. Ohio Dep't of Human Servs.*, 62 Ohio St.3d 97, 105, 579 N.E.2d 695, 701 (Ohio 1991), *cert. denied*, 112 S.Ct. 1483 (1992), the Ohio Supreme Court held that "[t]he reimbursement of monies withheld pursuant to an invalid administrative rule is equitable relief, not money damages, and is consequently not barred by sovereign immunity."

Similarly, respondents in this case are seeking money *not* in compensation for injuries resulting from appellant's action. Rather, they ask to be placed in the same position they would have been in, but for appellant's implementation of a statute which proved to be unconstitutional. Once the statute was declared unconstitutional, "it is just as inoperative as had it never been enacted," and the statute prior to its enactment continues in force. *See McGuire v. C & L Restaurant, Inc.*, 346 N.W.2d 605, 614 (Minn. 1984); *Bongard v. Bongard*, 342 N.W.2d 156, 159 (Minn. App. 1983).

Under the prior statute, respondents were entitled to a minimum of $203 per month, which is the same level of benefits available to individuals who have resided in Minnesota over six months. *See* Minn. Stat. § 256D.06, subd. 1 (1990). Thus, respondents essentially seek enforcement of the prior statute, and request that appellant be required to reimburse them the amount she was mandated by law to pay under that prior statute. Such relief is more appropriately characterized as equitable relief in the form of specific performance, not money damages, and is not barred by the doctrine of sovereign immunity. *See Bowen*, 487 U.S. at 900-01, 108 S.Ct. at 2735.

The district court's refusal to award retroactive benefits in this case effectively amounted to a prospective declaration that the statute was unconstitutional, which is contrary to the general rule. *See McGuire*, 346 N.W.2d at 614; *Bongard*, 342 N.W.2d at 159. Allowing reimbursement will tend to further the policy of providing an incentive for challenging unconstitutional laws. *See McGuire*, 346 N.W.2d at 614 (citing *Wegan v. Village of Lexington*, 309 N.W.2d 273, 283 (Minn. 1981) (Amdahl, J., concurring)).

## CONCLUSION

Finally, we reiterate that a state may not constitutionally apportion its services or benefits based solely on the length of a citizen's residency. Acceptance of the appellant's position in this case "would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection." *Shapiro*, 394 U.S. at 632-33, 89 S.Ct. at 1330. Such a result is contrary to the belief that an individual should be free to travel from state to state, and choose the state of his or her residency:

> If a law has "no other purpose * * * than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." *United States v. Jackson*, 390 U.S. 570, 581, 88 S.Ct. 1209, 1216, 20 L.Ed.2d 138 (1968).

*Id.* at 631, 89 S.Ct. at 1329.

## DECISION

The district court did not err in determining that the statute violates the Equal Protection Clause of the United States Constitution, and in concluding that a claim is not raised under the Privileges and Immunities Clause of the United States Constitution.

While not addressed by the district court, we conclude the statute also violates the equal protection clause of the Minnesota Constitution.

The district court's refusal to award retroactive benefits is reversed. The matter is remanded with directions to fashion appropriate specific relief in the form of reimbursement to class members who received reduced benefits under the statute prior to January 24, 1992, when the district court enjoined appellant from enforcing the statute. Class members entitled to reimbursement include not only those new residents receiving reduced benefits as of January 24, 1992, but also those who, by January 24, 1992, had been Minnesota residents for over six months and who were no longer receiving reduced benefits or whose eligibility for five months of work readiness benefits had expired.

**Affirmed in part, reversed in part and remanded.**

June 2, 1992
/s/ Daniel F. Foley

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, and CASSANDRA RIVERS,

Plaintiff,

v.

NATALIE HAAS STEFFEN, in her official capacity as Commissioner, Minnesota Department of Human Services,

Defendant.

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**AMENDED ORDER**

File No. C8-91-11691

(Filed Jan. 23, 1992)

The above matter was before the undersigned judge for hearing on December 17, 1991, and decided by the undersigned judge on January 8, 1991 [sic]. By inadvertence and oversight, the undersigned judge failed to order the entry of judgment in the Order dated January 8, 1992.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. That the Order dated January 8, 1992, is hereby made a part of this Amended Order.

2. Let judgment be entered forthwith without regard to Minn. Gen. R. Prac. 125.

/s/ Michael T. De Courcy
Michael T. De Courcy
District Court Judge

Dated this 23rd day of January, 1991 [sic].

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, and CASSANDRA RIVERS,

Plaintiff,

v.

NATALIE HAAS STEFFEN, in her official capacity as Commissioner, Minnesota Department of Human Services,

Defendant.

Court File No: C8-91-11691

**ORDER and MEMORANDUM**

(Filed Jan. 9, 1992)

## ORDER

This matter came before the undersigned on December 17, 1991 on the parties' cross motions pursuant to Minn. R. Civ. P. 56.03 for summary judgement. Paul Onkka of Southern Minnesota Regional Legal Services and Ann Cofell and William C. Daniels Jr. of Mid-Minnesota Legal Assistance appeared for plaintiffs. Jocelyn Olson of the Minnesota Attorney General's Office appeared for defendant. Based upon all the files, records, and proceedings herein and upon the arguments of counsel, the Court makes the following

## ORDER

1. This action shall proceed as a class action pursuant to Rules 23.01 and 23.02(b) of the Minnesota Rules of Civil Procedure. The class is defined as all residents of Minnesota who, on or after July 1, 1991, applied for and were eligible to receive general assistance or work readiness benefits under Minn. Stat. § 256D.01-.21, but who, solely because they had lived in Minnesota for less than six months prior to their application, received less than the amount of such benefits they would otherwise have received.

3. Plaintiffs are entitled to summary judgement as a matter of law on their claim that Minnesota Statutes § 256D.065 (Supp. 1991) is unconstitutional under the United States Constitution.

4. Accordingly, defendant is enjoined and restrained from enforcing or in any manner further implementing the provisions of Minnesota Statutes § 256D.065 and shall immediately inform each local human services agency that this law and the defendant's policies and directives implementing it are rescinded and no longer in effect.

5. The attached memorandum is incorporated herein by reference.

Dated: 8 January 1992

/s/ Michael T. De Courcy
Michael T. De Courcy
Judge of District Court

## JUDGMENT

The foregoing shall constitute the judgment of the Court.

Entered: 1/24/92

Copies Mailed to:

Paul Onkka
Ann Cofell
William C. Daniels Jr.
Joycelyn Olson

J.E. GOCKOWSKI
Court Administrator
By /s/ Barbara Hanggi
Deputy Clerk

## MEMORANDUM

In this action, plaintiffs challenge the constitutionality of Minnesota Statutes § 256D.065 (Supp. 1991) arguing this provision violates their rights to travel and to equal protection of the laws under the United States and Minnesota Constitutions. Plaintiffs also seek to amend their complaint to bring this claim as a class action and to certify the class. The parties have submitted stipulated facts and agree that as no genuine issues of material fact exist, a summary judgement proceeding is appropriate.

### CONSTITUTIONAL ISSUES

Interstate travel is a fundamental right guaranteed by the United States Constitution. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 254, 94 S.Ct. 1076, 1080 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 338, 92 S.Ct. 995, 1001 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 629-30, 89 S.Ct. 1322, 1329 (1969). Laws infringing upon the right to travel are unconstitutional unless necessary to promote a compelling governmental interest. *Memorial Hospital*, 415 U.S. at

254, 94 S.Ct. at 1080; *Dunn*, 405 U.S. at 339, 94 S.Ct. at 1001. A state law burdens the right to travel when it actually deters travel, when impeding travel is its primary goal, or when it uses any classification which penalizes the exercise of the right to travel. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903, 106 S.Ct. 2317, 2321 (1986); *see also Zobel v. Williams*, 457 U.S. 55, 60 & n. 6, 102 S.Ct. 2309, 2312 & n. 6 (1982) (classifications infringing on the right to travel often are scrutinized using an equal protection analysis).

In this case, Minnesota Statutes § 256D.065 burdens the plaintiffs' right to travel because the law's primary objective was to deter indigent people from traveling to Minnesota. *See Soto-Lopez*, 476 U.S. at 903, 106 S.Ct. at 2321; *Shapiro*, 394 U.S. at 631, 89 S.Ct. at 1329 (deterring in-migration of indigents is a constitutionally impermissible purpose). The Senate author of the legislation, Dean Johnson, cited numerous examples of low-income people who had traveled to Minnesota solely to collect higher welfare benefits and then stated:

> I look down at the courthouse, and I see people coming in each and every day. And they're getting assistance. And I don't mind the fact they're Minnesota residents, but they are coming in from other states, because General Assistance is a little higher than some other states. I am willing to help those people who are down and out. But I think we have an obligation to the citizens of Minnesota first, before we help people coming from other states.

Senate Floor Debate Transcript at 3. Senator Johnson went on to say:

> [T]here are people who have come, because welfare is better than the state in which they originated from. . . . That person came in here on a train and now we're going to give him 203 bucks. Well, I'd rather have them go to another state and get their 203 bucks.

*Id.* at 12. The House author expressed similar sentiments. *See* House Floor Debate Transcript at 7. These statements clearly show the intent of Minnesota Statutes § 256D.065 was to deter indigents from traveling to Minnesota.

Recasting the statute's purpose as not providing an incentive for indigent people to come to Minnesota does not remove the burden on the right to travel. "[A] State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally." *Shapiro,* 394 U.S. at 631, 89 S.Ct. at 1330.

Moreover, Minnesota Statutes § 256D.065 burdens plaintiffs' right to travel because it uses a classification which penalizes the exercise of that right. "[T]he right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents". *Memorial Hospital,* 415 U.S. at 262, 94 S.Ct. at 1084. Here, new Minnesota residents who apply for General Assistance receive lower benefits than other Minnesota residents. Those who receive the same or an even larger grant than they did in their former state of residence still are denied the higher level of benefits enjoyed by longtime Minnesota residents. As Minnesota Statutes § 256D.065 relies on a classification which denies newcomers privileges granted to oldtime residents, it penalizes the right to travel. *See Soto-Lopez,* 476 U.S. at

903, 106 S.Ct. at 2321; *Memorial Hospital*, 415 U.S. at 262, 94 S.Ct. at 1084.

Because Minnesota Statutes § 256D.065 burdens plaintiffs' fundamental right to travel, it is unconstitutional unless necessary to promote a compelling state interest. *Memorial Hospital*, 415 U.S. at 254, 94 S.Ct. at 1080; *Dunn*, 405 U.S. at 339, 92 S.Ct. at 1001. Here, neither state interest offered by defendant is compelling. The first, removing an incentive for indigents to move to Minnesota, is an unconstitutional purpose which cannot be compelling. *See Shapiro*, 394 U.S. at 631, 89 S.Ct. at 1329 (deterring in-migration of indigents is a constitutionally impermissible purpose). The second, saving money, is also not a compelling state interest. *See Memorial Hospital*, 415 U.S. at 263, 94 S.Ct. at 1085. As Minnesota Statutes § 256D.065 serves no compelling state interest, the law unconstitutionally violates plaintiffs' right to travel and to equal protection of the laws under the federal constitution.

Plaintiffs also argue Minnesota Statutes § 256D.065 violates the Privileges and Immunities Clause in Article IV, Section 2 of the United States Constitution. However, the Privileges and Immunities Clause establishes "that a State must accord residents and nonresidents equal treatment". *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 279, 105 S.Ct. 1272, 1276 (1985). In the present case, Minnesota Statutes § 256D.065 applies only to Minnesota residents. *See* Minn. Stat. § 256D.02, Subd. 12(a), .05, .051. Consequently, a Privileges and Immunities Clause issue does not arise in this case.

Finally, plaintiffs raise the claim that Minnesota Statutes § 256D.065 is unconstitutional under the equal protection clause of the Minnesota Constitution. As the statute plainly is invalid under the United States Constitution, there is no need to reach the issue of its constitutionality under the Minnesota Constitution.

## CLASS CERTIFICATION ISSUES

Plaintiffs' [sic] have also sought permission to amend their Amended Complaint to bring their claims as a class action under Minn. R. Civ. P. 23.01, 23.02(b) and 23.02(c). Defendant agrees class certification is proper under Minn. R. Civ. P. 23.02(b) but opposes certification under Rule 23.02(c) because plaintiffs cannot recover money damages in this case.

It would be inappropriate to allow plaintiffs to proceed with a class action under Minn. R. Civ. P. 23.02(c) because money damages cannot be awarded under 42 U.S.C. § 1983. A state official acting in her official capacity is not a "person" who may be sued for money damages under section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 2312 (1989). As plaintiffs in the present case have sued Natalie Haas Steffen in her official capacity as Commissioner of the Minnesota Department of Human Services, they may not recover money damages under 42 U.S.C. § 1983.

Plaintiffs further claim they are entitled to money damages under state law for violation of their constitutional rights. The State is liable for its torts and those of its employees with limited exceptions. Minn. Stat. § 3.736 (1990 & Supp. 1991). However, Minnesota law does not

recognize deprivation of constitutional rights as a tort for which money damages may be recovered from the state. *See id.; accord Bird v. Department of Public Safety,* 375 N.W.2d 36, 40 (Minn. Ct. App. 1985) (state not liable for violation of due process rights). Further, the Tort Claims Act provides the state and its employees are not liable for "a loss caused by an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule." Minn. Stat. § 3.736, Subd, 3(a). Given these provisions, plaintiffs simply cannot recover money damages under state law for the violation of their constitutional rights. Accordingly, plaintiffs' motion to amend their complaint to bring a class action under Minn. R. Civ. P. 23.02(c) must be denied.

Finally, plaintiffs argue their claim for retroactive benefits is equivalent to equitable relief rather than money damages. However, retroactive benefits constitute an award of money damages. *See Edelman v. Jordan,* 415 U.S. 651, 668 94 S.Ct. 1347, 1358 (1974). Since money damages may not be awarded against defendant in this case, plaintiffs claim for retroactive benefits is denied.

M.T.D.

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Charles Mitchell, et al.,

Plaintiffs,

vs.

Natalie Haas Steffen, in her official capacity as Commissioner, Minnesota Department of Human Services,

Defendant.

CASE TYPE: OTHER CIVIL

Court File No. C8-91-11691

**STIPULATION OF FACTS**

For the purposes of the above-entitled action only, the parties through their undersigned counsel hereby stipulate that the following facts are true:

1. The maximum benefits allowable under Minnesota's general assistance statute, Minn. Stat. §§ 256D.01, subd. 1a and 256D.06, subd. 1 (1990), to eligible persons who have resided in Minnesota longer than six consecutive months are $203 per month for a single person and $260 per month for a married couple.

2. The maximum benefits allowable under Minnesota's work readiness statute, Minn. Stat. § 256D.051 (1990 and 1991 Supp.) are $203 per month for a single person and $260 per month for a married couple, for persons who are state residents of longer than six consecutive months duration and whose income and resources are less than the standard of need but who are not categorically eligible for the general assistance program. Work readiness benefits are available for five consecutive months in a 12-month period (or, seven consecutive

months in a 12-month period for persons who are determined to be functionally illiterate) if the recipients comply with work readiness program requirements; when one member of a married couple has exhausted the five or seven months of work readiness eligibility, and the other member has one or more months of eligibility remaining, the standard for the latter member is $187 per month. *See* Minn. Stat. §§ 256D.051, 256D.101, and 256D.111 (1990 and 1991 Supp.).

3. 1991 Minn. Laws ch. 292, art. 5, § 45, became effective on July 1, 1991. The law will be codified as Minn. Stat § 256D.065 and will be hereinafter referred to by that citation. It provides a new method of calculating general assistance and work readiness payments to eligible adults without minor children who have been residing in the state less than six months. These individuals are to receive an amount that, when added to nonexempt income (as defined by Minn. Rules pts. 9500.1200 to 9500.1270) actually available to the person, is no greater than 60 percent of the amount that the person would be eligible to receive under Minn. Stat. § 256D.06, subd. 1 (1990). However, if the person actually received benefits in the last state of residence, the person may receive benefits equal to the lesser of: (1) the benefits actually received in the last state of residence, or (2) the maximum benefits allowable under Minn. Stat. § 256D.06, subd. 1 (1990). To receive a higher benefit amount based on benefits received in the last state of residence, the person must provide verification of the amount of assistance received in the last state of residence. Therefore, under Minn. Stat. § 256D.065, eligible adults without minor children who have resided in the state less than six months would

receive general assistance or work readiness benefits (whichever applies) of a maximum of $122 per month for a single person or $156 per month for a married couple, unless benefits received in the last state of residence were higher than those amounts. In that event benefits are determined as described above.

4. The Department of Human Services estimates that in the month of November, 1991, approximately 1,000 persons are receiving general assistance or work readiness benefits at the 60 percent or other level specified by Minn. Stat. § 256D.065. The Department projects that between July 1, 1991, and June 30, 1992, approximately 3,000 persons (accounting for case turnover) will have received at some time general assistance or work readiness benefits at the 60 percent or other level specified by Minn. Stat. § 256D.065.

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

Dated: November 13, 1991

By: /s/ Jocelyn F. Olson
JOCELYN F. OLSON
Assistant Attorney General
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Dated November 15, 1991.

/s/ Paul Onkka
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*Attorney for Plaintiffs*

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Charles Mitchell, et al.,

Plaintiffs,

vs.

Natalie Haas Steffen, in her official capacity as Commissioner, Minnesota Department of Human Services,

Defendant.

CASE TYPE: OTHER CIVIL

Court File No. C8-91-11691

**AFFIDAVIT OF JOHN PETRABORG**

JOHN PETRABORG, being first duly sworn, deposes and states as follows:

1. I am the Assistant Commissioner for Family Self-Sufficiency Services in the Minnesota Department of Human Services. I have been in this position since 1987.

2. I am responsible for supervising the administration of all state-wide assistance payments programs, including general assistance, work readiness, aid to families with dependent children, and food stamps. In addition, I supervise the development and implementation of the MAXIS state-wide computer system for administration of these programs. I am also responsible for the Department's legislative proposals with respect to these programs, and for assuring that the Department complies with statutory requirements in this area.

3. In 1990, as the Department of Human Services prepared its biennial budget for consideration by the 1991 Legislature, I was informed that the State of Minnesota

was facing a deficit of $1.2 billion. The Department of Human Services was required by then Governor Rudy Perpich to proposed $200 million in reductions from its current budget.

4. From August 1990 through January 1991, staff under my supervision researched a wide variety of public assistance budget cut options for balancing the biennial budget for fiscal years 1992 and 1993. These proposals examined possible cuts in all assistance programs, with the estimated savings ranging from $25,000 to $22 million per year. Given the seriousness of the budget shortfall, no option was excluded from consideration as all state agencies developed proposals to cut the state budget to conform with revenues. Among the many options which were considered were eliminating the work readiness program altogether; eliminating AFDC-emergency assistance and emergency general assistance; and even repealing the general assistance, work readiness and emergency general assistance program entirely.

5. The Department of Human Services estimates that the potential savings to the State of Minnesota from 1991 Minn. Laws ch. 292, art. 5, § 45 are approximately $890,000 for state fiscal year 1992; $1 million for state fiscal year 1993; $1.2 million for state fiscal year 1994; and $1 million for state fiscal year 1995.

/s/ John Petraborg
JOHN PETRABORG

Subscribed and sworn to before me
this 5 of December, 1991.

/s/ Claudia A. Eliason
Notary Public

[seal]

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 14, 1996

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, and CASSANDRA RIVERS,

Plaintiffs,

**AMENDED COMPLAINT**

v.

NATALIE HAAS STEFFEN, in her official capacity as Commissioner, Minnesota Department of Human Services,

**File No. C-891 11691**

Defendant.

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## Preliminary Statement

1. Plaintiffs bring this action for declaratory, injunctive, and monetary relief on behalf of themselves and a class of adult residents of Minnesota whose general assistance and work readiness benefits are, or will be, less than those received by other Minnesotans solely because under a new Minnesota law they have not resided in this state for at least six months prior to their application for assistance. Plaintiffs cannot meet all their basic human needs because under the law challenged in this action single individuals are eligible for $122 per month ($156 per month for couples) or the amount received in the former state of residence, if more than $122 per month, instead of the $203 ($260 for couples) received by others with similar needs who have lived in Minnesota for more than six months.

2. Plaintiffs' eligibility for only reduced benefit amounts is a violation of their rights to travel and to equal protection of the laws under the Constitutions of the United States and the State of Minnesota. It also violates their entitlement to the privileges and immunities secured to all citizens by the United States and Minnesota Constitutions.

3. Accordingly, Plaintiffs seek this court's declaratory judgment that section 45 of Article 5 of Chapter 292 of the 1991 Laws of Minnesota (codified at Minnesota Statutes § 256D.065), and Defendant's actions in implementing this law, are unconstitutional. Plaintiffs also seek this court's preliminary and permanent injunction prohibiting implementation and enforcement of this law by Defendant. Lastly, Plaintiffs request appropriate monetary relief to compensate them for the loss of the benefits to which they are lawfully entitled.

## Authority for Relief

4. Plaintiffs bring this action, in part, pursuant to 42 U.S.C. § 1983 in that his rights under the United States Constitution are being violated by Defendant who is acting under color of state law. Plaintiffs also assert claims that their rights under the Minnesota Constitution are being violated and seek appropriate relief under state law.

## Parties

5. Plaintiffs Charles Mitchell and Steve Wilson are adult residents of the State of Minnesota who have lived

here less than six months. Both came to Minnesota seeking employment and intend to become permanent residents of this state. They now reside in Ramsey County. Each applied for assistance after July 1, 1991, and pursuant to § 256D.065, is receiving reduced general assistance or work readiness benefits of $122 per month.

6. Plaintiff Wesley Beamon is an adult resident of the state of Minnesota who has lived here less than six months. He came to Minnesota seeking employment and intends to become a permanent resident of this state. Mr. Beamon now resides in Hennepin County. He applied for General Assistance benefits after July 1, 1991, and pursuant to § 256D.065, is entitled to reduced benefits under the general assistance program in the amount of $165 per month. This amount equals the amount of public assistance benefits Mr. Beamon received in his last state of residence.

7. Plaintiff Cassandra Rivers is an adult resident of the State of Minnesota who had not lived in Minnesota for at least six months immediately prior to making an application for General Assistance benefits. She applied for assistance after July 1, 1991, and pursuant to § 256D.065, is receiving reduced General Assistance benefits of $162. This is the amount of benefits she received in her last state of residence.

8. Defendant Natalie Haas Steffen is the Commissioner of the Minnesota Department of Human Services and pursuant to Minn. Stat. § 256.01 is generally responsible for the administration and implementation of all forms of public assistance provided under Minnesota law,

including the general assistance and work readiness programs established under § 256D.01, *et seq.*

Class Action

9. Plaintiffs bring this action pursuant to Rules 23.01 and 23.02(b) of the Minnesota Rules of Civil Procedure on behalf of themselves and a class of persons comprised of all residents of Minnesota who, on or after July 1, 1991, have applied for and are eligible to receive general assistance or work readiness benefits but who, solely because they have lived in Minnesota less than six months prior to their application, have received or will receive less than the amount of such benefits they would otherwise be entitled to receive.

10. The class of persons sought to be represented by Plaintiffs is so numerous as to make joinder impracticable. Plaintiffs estimate the class is composed of more than 1,500 individuals located throughout the 87 counties in Minnesota in which this residency requirement is being implemented. The questions of law and fact are common to all class members. The claims made by Plaintiffs are typical of those of the class. Plaintiffs will fairly protect the interests of the class as a whole. In addition, the Defendant has acted and will act on grounds applicable to the entire class thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

## Statutory Background

11. The general assistance and work readiness programs are the welfare programs of last resort in Minnesota. They make up the so called safety net for those who cannot get help elsewhere in meeting their basic needs for shelter, clothing and health. In § 256D.01, subd. 1, the legislature has declared the purpose of these programs to be as follows:

> It is declared to be the policy of this state that persons unable to provide for themselves and not otherwise provided for by law and who meet the eligibility requirements of § 256D.01 to § 256D.21 are entitled to receive grants of General Assistance necessary to maintain a subsistence reasonably compatible with decency and health. Providing this assistance is a matter of public concern and a necessity in promoting the public health.

12. Benefits under these programs are paid to individuals and families whose incomes are below the standard of need set by the Defendant and who are not eligible for any other federally funded programs. When added to any other available income, full benefits under either program can equal no more than $203 per month for a single individual and $260 per month for a married couple. Eligible families receive the same amount received by families eligible for Aid to Families with Dependent Children (AFDC).

13. General assistance benefits are paid to low-income individuals who fit into one of 14 categories indicating they are incapable of being self-supporting either permanently or temporarily. It is also paid to low-

income families who do not qualify for the AFDC program. General assistance benefits are available for as long as the individual continues to meet the criteria for any one of the 14 categories.

14. Work readiness benefits are paid to individuals who do not qualify for one of the general assistance categories. In this program, participation is required in activities intended to assist the individual in finding, applying for, and retaining employment. Beginning July 1, 1991, work readiness benefits are available for only five consecutive months each year except for those recipients who are participating in literacy training for whom benefits are available for seven months.

15. On June 3, 1991, Chapter 292 of the 1991 Minnesota Session laws was signed and became law. Section 45 of Article 5 of Chapter 292 (codified at Minn. Stat. § 256D.065) created a new six months residency requirement for the general assistance and work readiness programs. It provides as follows:

> Notwithstanding any other provisions of sections 256D.01 to 256D.22, otherwise eligible applicants without children, who have been residing in the state in the state less than six months, shall be granted general assistance and work readiness payments in an amount that, when added to the nonexempt income actually available to the applicant, shall equal 60 percent of the amount the applicant would be eligible to receive under section 256D.06, subdivision 1. A person may receive benefits in excess of this amount, equal to the lesser of the benefits actually received in the state of last residence, or the maximum benefits allowable under section

> 256D.06, subdivision 1. To receive the higher benefit amount, the person must provide verification of the amount of assistance received in the last state of residence. Nonexempt income is the income considered available under Minnesota Rules, parts 9500.1200 to 9500.1270.

16. This new residency requirement became effective July 1, 1991.

17. Defendant has taken action to implement this new law by issuing Instructional Bulletin #91-4A, dated June 7, 1991. Paragraph VII of that Bulletin specifically implements the provisions of § 256D.065. A copy of the relevant portion of the Bulletin is attached to this Complaint as Exhibit #1.

## Factual Allegations

18. Plaintiff Charles Mitchell is a U.S. citizen and currently resides in St. Paul, Minnesota. He is 39 years of age and is unmarried.

19. Plaintiff Mitchell has lived in Minnesota since July 7, 1991 and came here from Florida. He lived in Minnesota before for about 15 months, from July, 1989 to October 1990. During this time period he worked for a temporary job agency doing a variety of different work. He also received some general assistance to supplement his wages. With the income he had at that time he was able to obtain and pay for his own housing as well as his personal needs.

20. Plaintiff Mitchell left Minnesota in October, 1990 to briefly visit his relatives in Louisiana and then traveled to Florida where he had worked before. In Florida he

worked for a lawn service company doing yard and landscaping work. However, the weather was especially bad this past winter and there was not much work for him there. He did not receive any public assistance benefits in Florida other than food stamps for one month in May or June, 1991.

21. Plaintiff Mitchell came to Minnesota in July, 1991 because he had been able to find work here the year before. When he arrived he stayed at a shelter in Minneapolis for about two months while he looked for work. However, he has not been able to find permanent employment and even the temporary job agencies have had very little work available.

22. Near the end of August, 1991, Plaintiff Mitchell was informed by Hennepin County that his shelter costs would no longer be paid for by the county and he would have to live on his own receiving no more than $122 per month. He started looking for a place to stay and after searching the want ads and calling landlords the least expensive place he was able to find rented for $300 per month.

23. Plaintiff Mitchell stayed with some friends for a few days after he left the shelter until he heard that something was available in St. Paul. H [sic] was able to stay at Mary Hall which is a shelter in downtown St. Paul. He applied to obtain permanent subsidized housing in another part of the same facility and was recently accepted. His rent will be 30% of his income.

24. Meanwhile Plaintiff Mitchell continues to look for work. He doesn't have a high school diploma but he did earn a GED in July, 1982. He has also been trained as

a butcher and has worked as a butcher in California as well as doing other jobs in the meat packing industry.

25. Although for the present Plaintiff Mitchell has a place to stay, he must pay for all his other needs from the total of the $122 provided him. This includes food, clothing, transportation, and his personal needs. Right now, he has no money at all. Additionally, he needs other things such as warm clothing, including a winter coat and underwear for outdoor work, shoes, money and soap for washing his clothes, toothpaste, and other personal need items so that he can be presentable for job interviews. He is eligible for food stamps but has no cooking utensils to prepare his food at home. Consequently he has been forced to rely on food for his meals provided by charitable organizations in both Minneapolis and St. Paul.

26. Plaintiff Steve Wilson is a U.S. Citizen and currently resides in St. Paul, Minnesota. He is 39 years of age and is not married.

27. Plaintiff Wilson has lived in Minnesota since July 7, 1991 when he arrived from Florida. He has not previously lived in Minnesota but has lived in Florida for the past seven years. He came to Minnesota because his friend Charles Mitchell told him that there was work here.

28. While he lived in Florida, Plaintiff Wilson worked fairly steadily in the construction trades as a carpenter, steel worker, and machine operator. But in February, 1990, he fell when working on a job of his own and injured his neck. Since then he has been unable to find work because of this injury and others which have

led to arthritis in his shoulder and ankle. These conditions make it very hard for Plaintiff Wilson to find work in jobs where he has experience. It is questionable whether he could pass the physical which is often required in these jobs.

29. Since coming to Minnesota, Plaintiff Wilson has been unable to find permanent work which he can do physically. He has been getting medical care at Hennepin County Medical Center where he has been told he may need surgery on his ankle.

30. Plaintiff Wilson is a high school graduate and also has an Associate of Arts degree from Lake Superior State College in Sault Ste. Marie, Michigan.

31. When he arrived in Minnesota, Plaintiff Wilson stayed in a shelter while he got medical care and looked for what work he could do. He also applied for general assistance and work readiness. At the end of August, 1991, he was told he had to leave the shelter because Hennepin County would no longer pay for his stay there. He was told he would be eligible for only $122 each month and that he would have to pay for all his needs with that amount.

32. Plaintiff Wilson looked for another place to live before he left the shelter but it was impossible to find anything on $122 per month. He stayed at the home of some friends for about two days after he left the shelter until he heard that some temporary housing was available in St. Paul. He stayed for awhile at Mary Hall which is a shelter in downtown St. Paul. He applied for permanent subsidized housing for single adults at the same

facility and has been informed that he has been accepted. His rent will be 30% of his income.

33. Although for the time being Plaintiff Wilson has a place to live, he has very little to no money left for other needs. This includes food, clothing, transportation to look for work. None of these are provided by the shelter where he lives. He is able to feed himself only by going to meal sites run by charities. He is in particular need of new shoes and if he is able to find work he may need a special work boot to accommodate a brace he uses for his ankle.

34. Plaintiff Wesley Beamon is a U.S. citizen and currently resides in Minneapolis, Minnesota. He is 30 years old and is unmarried.

35. Plaintiff Beamon is the father of three minor children, two girls and one boy, ages 11, 7 and 6, who live in Minneapolis, Minnesota and have lived in Minnesota approximately two and one-half ($2^1/_2$) years with their mother, Mr. Beamon's former wife.

36. Plaintiff Beamon has lived in Minnesota since September 6, 1991. He came to Minnesota to be close to his minor children, to attempt a reconciliation with his former wife, and to seek employment. He came to Minnesota with the intention of becoming a permanent resident of the state.

37. The Plaintiff Beamon was employed from approximately April, 1990, until April 17, 1991, at a meat packing plant, "Moo-Oink", BBHM Management, in Chicago, Illinois. He performed a variety of tasks there related to preparation and packing of meat products. He

earned $5.50 per hour. He received unemployment compensation benefits for approximately three months after he left employment at BBHM Management.

38. In addition to work in the meat packing industry, Plaintiff Beamon has also worked as an auto mechanic in a variety of garages and in shipping and receiving in the Chicago, Illinois area for the last 13 years.

39. Plaintiff Beamon earned a General Equivalency Diploma from Kennedy-King College in Chicago, Illinois in 1986.

40. Plaintiff Beamon received General Assistance benefits from the state of Illinois of $165 per month for two months before he moved here. He spent all of the money he had for bus fare to come to Minnesota.

41. Plaintiff Beamon has been looking for a job virtually every work day since he arrived in Minnesota, but very few places are accepting applications. He is looking for employment as a maintenance person or as a stockperson. He does not own any tools so it is unrealistic for him to look for work as an auto mechanic. He has not received a job offer yet.

42. Plaintiff Beamon had arranged by telephone with his former wife to stay with her temporarily until he found employment. However, when he arrived in Minneapolis, his former wife had apparently changed her mind and would not let him stay with her. He applied for General Assistance benefits in Hennepin County, because he had no income and no place to stay.

43. The Hennepin County Department of Economic Assistance gave Plaintiff Beamon a voucher to stay at

Harbor Light, a shelter run by the Salvation Army in Minneapolis, Minnesota. Meals at Harbor Light were included in the voucher. He received a voucher for the balance of September, 1991.

44. Plaintiff Beamon has recently secured permanent housing. He is renting a furnished room with kitchen privileges and a shared bathroom. This is the most affordable housing he could locate. After he pays his rent, he has virtually no remaining money from his reduced grant amount with which to purchase basic necessities such as personal hygiene items, to launder his clothing, or to pay for transportation.

45. Plaintiff Beamon participates in the Work Readiness program. He attended an orientation meeting on October 3, 1991. He is scheduled to go to a Jobs Club on October 15, 1991.

46. Until October 3, 1991, when Hennepin County issued Plaintiff Beamon a bus card for five roundtrip bus fares, he had no money to pay for bus fare so his efforts to find employment were limited by how far he could walk each day. He does not know when he will be eligible for another bus card.

47. Because Plaintiff Beamon does not receive as much in General Assistance benefits as other Minnesota residents who have lived here longer, he is unable to purchase personal care items and has a limited ability to pay for transportation to apply for jobs. He is unable to provide any child support for his children and he cannot even take them out for a treat or give them any pocket money. He does not get out to his children's home as

frequently as he would like because he has no transportation other than walking.

48. Plaintiff Cassandra Rivers is a U.S. citizen and currently resides in South St. Paul, Minnesota.

49. Plaintiff Rivers lived in Minnesota from approximately February, 1990 until the first week of June, 1991. She was unemployed during that time because of her disability. She applied for SSI disability benefits while living in Minnesota; her application is still pending. During the approximately fifteen months Plaintiff Rivers lived in Minnesota, she lived with a roommate, L.J. Williams in Eagan, Minnesota.

50. In early June, 1991, Plaintiff Rivers' roommate, L.J. Williams, got a job offer as a truck driver and they moved to Council Bluffs, Iowa. When they arrived in Council Bluffs, Iowa, they discovered that the job had fallen through.

51. Plaintiff Rivers received assistance from the state of Iowa of $162 per month which was paid directly to her landlord.

52. In late September, 1991, Plaintiff Rivers and her roommate returned to Minnesota with the hopes that her roommate could find employment in Minnesota.

53. Plaintiff Rivers applied for General Assistance benefits shortly after arriving in Minnesota. On October 1, 1991, she received $162 in benefits. She was told that she was not entitled to the full amount of General Assistance benefits because she had not resided in Minnesota for six months immediately prior to applying for benefits.

54. Plaintiff Rivers and her roommate have located permanent housing; the rent is $300 per month. They used almost all of their income for October to pay the rent. They have no furniture and are sleeping on the floor. They have no money with which to buy basic items such as personal hygiene items, household supplies, and cooking utensils.

## Claims for Relief

55. Defendant's refusal, in accordance with new § 256D.065, to grant to Plaintiffs the full amount of general assistance or work readiness benefits to which they are otherwise entitled solely because they have not resided in Minnesota for at least six months prior to their applications, is a violation of Plaintiffs' rights to travel guaranteed them by the United States Constitution.

56. Defendant's actions also violate Plaintiffs' rights to equal protection of the laws under the 14th Amendment to the United States Constitution and Article I, § 2 of the Minnesota Constitution.

57. Defendant's actions also violate Plaintiffs' entitlement to the privileges and immunities established under the laws of this state and secured to all citizens by Article IV, § 2 of the United States Constitution and Article I, § 2 of the Minnesota Constitution.

## Irreparable Harm

58. As a direct result of Defendant's actions, Plaintiffs have been deprived of income necessary to meet

their basic needs and have therefore suffered and will continue to suffer irreparable harm.

Relief Requested

**WHEREFORE**, Plaintiffs request the following relief:

1. That this court authorize this action to proceed as a class action pursuant to Rule 23(a) and (b)(2) of the Minnesota Rules of Civil Procedure.

2. That this court preliminarily and permanently enjoin Defendant from implementing and enforcing the provisions of § 256D.065 and ordering that Defendant take all necessary steps to ensure that any actions already taken to implement and carry out this law are rescinded and corrected.

3. That this court enter a declaratory judgment adjudicating and declaring that Defendant's actions, taken in accordance with § 256D.065, of granting to Plaintiffs only reduced general assistance and work readiness benefits because he has not resided in Minnesota for at least six months prior to his application for such benefits is a violation of Plaintiffs' right to travel and to equal protection of the laws and also denies them their privileges and immunities as citizens of this state all contrary to the United States and Minnesota Constitutions.

4. That this court grant to Plaintiffs their reasonable cost and disbursements herein, including reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

5. That this court grant such other and further relief as the court finds just and equitable, including retroactive

benefits for plaintiffs and members of the class he seeks to represent.

SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES

/s/ Paul Onkka
PAUL ONKKA
#82612
16174 Main Ave.
Prior Lake, MN 55372
(612) 440-1040

MID-MINNESOTA LEGAL ASSISTANCE

ANN COFELL #1233X
WILLIAM C. DANIELS, Jr.
#197993
430 First Avenue North,
Suite 300
Minneapolis, MN
55401-;1780
(612) 332-1441

ATTORNEYS FOR PLAINTIFFS

## ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys and witness fees may be awarded pursuant to Minn. Stat. § 549.21 to the party against whom the allegations in this pleading are asserted.

/s/ Paul Onkka
Paul Onkka

Attorney for Plaintiffs

VERIFICATION

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

Wesley Beamon, being first duly sworn, states that he is a Plaintiff in the above-entitled action; that he has read those portions of the foregoing Amended Complaint that relate to him and knows the contents thereof; and that the statements of fact made in the portions of the Amended Complaint relating to him are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

/s/ Wesley Beamon
Wesley Beamon

Subscribed and sworn to before me
this 11th day of October, 1991

/s/ Dorinda L. Wider
Notary Public

[seal]

## VERIFICATION

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Charles Mitchell, being first duly sworn, states that he is a Plaintiff in the above-entitled action; that he has read those portions of the foregoing Amended Complaint that relate to him and knows the contents thereof; and that the statements of fact made in the portions of the Amended Complaint relating to him are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

/s/ Charles L. Mitchell
Charles Mitchell

Subscribed and sworn to before me
this 10th day of October, 1991

/s/ Georgia Sherman
Notary Public

[seal]

VERIFICATION

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Steve Wilson, being first duly sworn, states that he is a Plaintiff in the above-entitled action; that he has read those portions of the foregoing Amended Complaint that relate to him and knows the contents thereof; and that the statements of fact made in the portions of the Amended Complaint relating to him are true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

/s/ Steve Wilson
Steve Wilson

Subscribed and sworn to before me
this 10th day of October, 1991

/s/ Georgia Sherman
Notary Public

[seal]

EXHIBIT #1



provision in any weekly payment plan submitted by the county agency to the commissioner for approval.

## VI. REFUSAL OF EMPLOYMENT PROVISIONS

The 60 day period of ineligibility for WR assistance for applicants who have quit, or refused a legitimate offer of suitable employment without good cause has been extended to GA applicants who are mandatory participants in the WR program. A *recipient* who is a mandatory WR participant who refuses or quits suitable employment is subject to the non-compliance provisions of section IV, item E of this bulletin.

## VII. PAYMENTS TO NEW RESIDENTS OF THE STATE

Effective July 1, 1991, any *non-family* applicant for GA or WR who has resided in the state for less than six continuous months is eligible for GA or WR in an amount that, when added to the countable income available to the applicant, equals *60 percent* of the Minnesota standard of assistance applicable to other residents of the state. In other words, the standard of assistance for non-family applicants who have been Minnesota residents for less than six months is $122 for a single person or $156 for a married couple.

However, if the applicant documents that the applicant actually received, in the applicant's last state of residence, a greater amount for the applicant's needs than the reduced standard, the applicant's standard of assistance in Minnesota is equal to the greater amount as long as the standard does

not exceed $203 for a single person or $260 for a married couple.

If the person remains eligible, the grant must be the full standard on the first of the seventh calendar month following the month in which the person establishes residence in Minnesota.

The limitations of benefits for WR cash assistance apply to persons subject to the reduced standard.

## VII. EXCLUDED INCOME FOR RESIDENTS OF NEGOTIATED RATE FACILITIES

GA rule part 9500.1223, subpart 5, item I, and Combined Manual (CM) section 18.18 provide for the exclusion or disregard of an additional $150 from the earned income of residents of Rule 36, Rule 35, and Rule 14 facilities for whom discharge and work are part of a treatment plan. The 1991 legislature extended this earned income provision to residents of *all* negotiated rate facilities as long [sic] discharge and work are part of the recipient's case plan, and as long as the disregarded income is placed in a separate savings account. See CM Section 18.18 for the treatment of this account and procedures to follow if the recipient draws money from the account.

VERIFICIATION

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Cassandra Rivers, being first duly sworn, states that she is a Plaintiff in the above-entitled action; that she has read those portions of the foregoing Amended Complaint that relate to her and knows the contents thereof; and that the statements of fact made in the portions of the Amended Complaint relating to her are true to her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes it to be true.

/s/ Cassandra L. Rivers
Cassandra Rivers

Subscribed and sworn to before me
this 16th day of October, 1991

/s/ Paul Onkka
Notary Public

[seal]

Wis. Stat. § 49.19 (11m) (Supp. 1992).

(11m)(a) The department shall apply to the secretary of the federal department of health and human services for approval of a demonstration project under which the department provides a person eligible for aid under this section who is described in par. (am) with monthly payments, for the first 6 months that he or she lives in this state, calculated on the basis of the aid to families with dependent children benefit level in the state in which the family most recently resided. The department shall promulgate a rule, which it shall update annually, establishing the aid to families with dependent children benefit that will be paid under the demonstration project according to family size and state of former residence. The department shall base the benefit for a family on the aid to families with dependent children benefit available to a typical family of the same size in the other state, taking into account all factors that may affect the amount of the benefit. The rule shall specify the factors that the department uses to establish the benefit for participants in the demonstration project. If a family moves from a state that allows a family to keep a different amount of income without reducing benefits than a family would be allowed to keep in this state, the department shall allow the family to keep a similar amount of income without reducing benefits.

(am) Under the demonstration project, a person is subject to receiving the payments under par. (a) if he or she has not previously resided in this state for at least 6 months and either:

1. Applies for benefits more than 90 days but fewer than 180 days after moving to this state and is unable to demonstrate to the satisfaction of the county department of social services or human services that he or she was employed for at least 13 weeks after moving to this state; or

2. Applies for benefits within 90 days after moving to this state.

(b) If approval under par. (a) is granted and if the supreme court determines, within 9 months after the department notifies the attorney general that the approval has been granted, that the demonstration project does not violate either the state constitution or the U.S. constitution or the supreme court does not make a decision on the constitutionality of the demonstration project within that time, the department shall implement the demonstration project. The department may conduct the demonstration project for a period not to exceed 36 months. The department may not start the demonstration project before a computerized system for determining the amount of benefits payable to recipients under the demonstration project is complete.

(c) Subject to pars. (b) and (d), the department shall conduct the demonstration project in Kenosha county, Milwaukee county, Racine county and up to 3 other counties. If the department does not initially select Rock county as one of the other counties and if one of the counties specified in this paragraph or initially selected by the department enacts an ordinance or adopts a resolution under par. (d), the department shall give Rock county priority for consideration as a replacement county.

(d) The department may not conduct the demonstration project in a county if the county enacts an ordinance or adopts a resolution objecting to participating in the demonstration project.

(e) If the department conducts the demonstration project, the department shall enter into a contract with the legislative audit bureau under which the legislative audit bureau will contract with a private or public agency for the performance of an evaluation of the demonstration project, including whether the demonstration project deters persons from moving to this state, and will submit the evaluation of the demonstration project to the governor and to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172(2).

(Seal)DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIES
Office of the Assistant Secretary,
Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

July 27, 1992

Mr. Gerald Whitburn
Secretary
Department of Health and Social Services
P.O. Box 7850
Madison, Wisconsin 53707

Grant Application No.
87-3-WR-WI-004

Dear Mr. Whitburn:

It is a pleasure to inform you that your application for waivers under section 1115 of the Social Security Act for an amendment to the above referenced grant, entitled "Two-Tier AFDC Benefit Demonstration Program," is approved upon your written acceptance of the enclosed Waiver Terms and Conditions. The project period for this activity is July 1, 1994 through June 30, 1997. The waivers necessary to implement the demonstration are identified on the enclosed listing.

If you have any questions of a programmatic nature, please contact Madeline G. Dowling, who will serve as the Federal Project Officer for this activity. Her address is: Division of Program Evaluation, Office of Family Assistance, Administration for Children and Families, 370

L'Enfant Promenade, S.W., Washington, D.C. 20447; telephone number: (202) 401-5065.

All official correspondence and questions concerning the fiscal aspect of this project should be directed to Daphne Weeden, Grants Management Specialist, Grants Operations Branch II, Division of Discretionary Grants, Office of Financial Management, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; telephone number: (202) 401-4046.

The Regional Office contact for this activity is Mary Jackson. Her address is: Administration for Children and Families, 105 West Adams Street, 20th Floor, Chicago, Illinois 60603.

Progress reports are due as specified in the Waiver Terms and Conditions. Please submit an original copy of the reports to Daphne Weeden, and a copy to Madeline Dowling, at the above addresses. A copy of the reports should also be submitted to the Regional Administrator for Children and Families at the Chicago address.

I look forward to working with you and your agency on this important initiative.

Sincerely,

/s/ Jo Anne B. Barnhart
Jo Anne B. Barnhart
Assistant Secretary
for Children and Families

Enclosures

cc: Mr. Jason Turner, Director
Office of Family Assistance

Ms. Marion Steffy
ACF Regional Administrator

Ill. Ann. Stat. ch. 305, § 5/11-30 (Smith-Hurd 1993).

**5/11-30. Aid recipients from other states; limitation on amount of aid**

§ 11-30. Aid recipients from other states; limitation on amount of aid. Notwithstanding any other provision of this Code, if an applicant for aid under any Article of this Code has moved to this State from another state, and if the applicant received public aid in that other state under its laws that are equivalent to this Code at any time within the 12 months immediately preceding the date the applicant became a resident of this State, then during the first 12 months that the applicant resides in this State the applicant shall not be eligible to receive aid under any Article of this Code in an amount greater than the amount of comparable aid the applicant received under the laws of the state from which he or she moved to this State. The Illinois Department shall apply for all necessary federal waivers, and implementation of this Section is contingent on the Illinois Department receiving any necessary federal waivers.

Laws 1967, p. 122, § 11-30, added by P.A. 87-860, § 3, eff. July 1, 1992.

**Formerly** Ill.Rev.Stat., ch. 23, ¶ 11-30.

N.Y. Soc. Serv. § 158(f) (1992).

(f) [Eff. until July 1, 1994, as amended by L. 1992, c. 41.] Notwithstanding any other provision of law, the home relief payment for any person who applied for home relief benefits within six months of establishing residency in the state, shall, for the first six months after establishing residency, be limited to the greater of: (i) eighty percent of the home relief grant set forth in section one hundred thirty-one-a of this chapter, or (ii) the standard of payment, if any, that would apply to the applicant under the laws of the state, if any, in which he or she resided immediately prior to establishing residency in this state, provided that in no event shall such amount be greater than one hundred percent of the home relief grant set forth in section one hundred thirty-one-a of this chapter. For the purposes of this section, the standard of payment which would be available under the laws of another state shall refer to a schedule of comparative grants to be promulgated biennially. Such schedule shall set forth, for any state which financially participates in or mandates a program of assistance generally available to needy persons meeting specified income and resource requirements, the amount of that state's maximum standard of payment, if any, for each household size. This subdivision shall not apply to any person entitled to federally funded refugee cash assistance under Title IV of the Immigration and Nationality Act.